

UNITED STATES DISTRICT COURT

ORIGINAL

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable YVONNE GONZALEZ ROGERS, Judge

IN RE: SOCIAL MEDIA)	Zuckerberg Motion to Dismiss
ADOLESCENT ADDICTION/)	
PERSONAL INJURY PRODUCTS)	Further Case Management
LIABILITY LITIGATION)	
)	NO. C 22-03047 YGR
)	
ALL ACTIONS)	Pages 1 - 94
)	
_____)	Oakland, California
		Friday, February 23, 2024

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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--000--

Friday, February 23, 2024

9:31 a.m.

P R O C E E D I N G S

--o0o--

THE CLERK: Good morning, everyone.

Calling the matter of 22-MD-03047-YGR, In Re: Social Media Adolescent Addiction Personal Injury Products Liability Litigation.

Parties, please step forward and state your appearances for the record.

THE COURT: No. I know we always do that. We're not having people step forward.

THE CLERK: Yes, Your Honor.

THE COURT: We have -- per or -- it will take too long.

Per our nominal protocol, you should have signed in already. If you didn't sign in and you want to be listed as having attended, make sure you do it before you leave. Just identify yourself if you come to the mic and you're speaking.

Okay. So a number of things to talk about today. I've read your case management statement in advance. Appreciate that. Have an update from Judge Kuhl. I have an update from Judge Kang. I'm sure you will give me your own versions of the updates.

Let's get started. First, let's just take argument on the

1 Zuckerman [sic] motion. So who'll be arguing those -- that
2 issue?

3 **MR. HESTER:** Good morning, Your Honor. Timothy
4 Hester on behalf of Mark Zuckerberg.

5 **THE COURT:** Good morning. And you're from which
6 firm?

7 **MR. HESTER:** Covington & Burling, Your Honor.

8 **THE COURT:** Okay. Great.

9 **MR. JASINSKI:** And good morning, Your Honor. Matthew
10 Jasinski with Motley Rice on behalf of the individual
11 plaintiffs who have sued Mr. Zuckerberg.

12 **THE COURT:** Okay.

13 I'm sorry, sir. You said your name was...?

14 **MR. HESTER:** Timothy Hester, Your Honor, of
15 Covington & Burling.

16 **THE COURT:** And Matthew Jasinski.

17 **MR. JASINSKI:** Yes, Your Honor.

18 **THE COURT:** Okay.

19 All right. So why don't you first each address the issue
20 that I laid out in the supplemental order that I issued with
21 respect to the briefing.

22 Before I turn the mic over to you, though -- and we'll
23 discuss this in terms of the current briefing on other
24 issues -- I do want everyone to understand my perspective.

25 I do think it's incumbent upon the Court to actually

1 evaluate the laws of the various states that are presented by
2 any given motion.

3 In this particular motion, the states or at least one
4 state seems to -- to have a different perspective on issues
5 of, like, duty. And yet, neither side really engages with the
6 distinctions that exist.

7 And you certainly don't help the Court by identifying
8 the -- the controlling law of the various states for the
9 plaintiffs who have filed suit. And that means more work for
10 us.

11 And like I've said before, you look around this room,
12 there are lots of lawyers. We actually need you to help us do
13 this work, especially -- you know, especially if you're
14 bringing a motion, so we need to know going forward what your
15 view is on the controlling authority for the states that are
16 at issue.

17 You may proceed.

18 **MR. HESTER:** Thank you, Your Honor.

19 So on the plaintiffs' briefing, they focused on the
20 question of fraudulent omission, but I understand that the
21 Court's order has raised the question of negligent
22 misrepresentation, and so that's the point I wanted to respond
23 to in relation of the Court's order on the supplemental
24 briefing.

25 From amongst states --

1 **THE COURT:** Let me ask you this: How many states'
2 laws are we dealing with?

3 **MR. HESTER:** Fifteen in total, Your Honor, if we
4 count California. The Court's order had it right in terms of
5 the plaintiffs' states of residence with one exception.
6 There's also at least one plaintiff from Massachusetts.

7 **THE COURT:** Okay. And which --

8 **MR. HESTER:** So I would add that to the list.

9 **THE COURT:** And which case number is that? Or could
10 you tell me the --

11 **MR. HESTER:** Yes, the -- that's -- that's case
12 number --

13 **THE COURT:** Or tell me the name first.

14 **MR. HESTER:** The plaintiff is Jada Cameron.

15 **THE COURT:** No, I'm going to have that first name
16 struck.

17 Are you -- Was that a first name that you used?

18 **MR. HESTER:** I -- it's listed in the caption, Your
19 Honor.

20 **THE COURT:** Okay.

21 **MR. HESTER:** But -- but the case number is
22 4-23-CV-03266, just one plaintiff from Massachusetts.

23 **THE COURT:** Oh, 3266.

24 **MR. HESTER:** Yes, Your Honor.

25 **THE COURT:** I'm looking at my list. Hold on.

1 I had that -- okay. So it's not South Carolina?

2 **MR. HESTER:** We don't have that as South Carolina,
3 Your Honor. We had that one as Massachusetts.

4 **THE COURT:** What is it?

5 **MR. JASINSKI:** The plaintiff resides in
6 Massachusetts, Your Honor. The place of use was
7 South Carolina, and the selected forum is the District of
8 South Carolina, so --

9 **THE COURT:** Yeah, the transfer forum was
10 South Carolina.

11 **MR. HESTER:** All right, Your Honor. Well, okay.
12 Thank you. I mean, we can -- we can proceed that way.

13 So I think that with that -- with that small caveat, then
14 we -- we believe those -- the states listed in the Court's
15 order are the right ones at issue; namely, the -- the forum
16 states and, in addition, the state of California.

17 And none of the -- none of these 25 plaintiffs who've
18 asserted individual claims against Mr. Zuckerberg reside or --
19 in California. But I understand the Court's order listed
20 that, and it's obviously one of the jurisdictions at issue.

21 **THE COURT:** Well, in part I listed it because you all
22 cite a lot of California law. And I appreciate that. I'm
23 pretty familiar with California law after all these years.

24 But California doesn't control other states' jurisdictions
25 unless, you know, they have the exact same rule, and then it

1 can be looked at as persuasive authority, not binding
2 authority, and so sometimes that's helpful.

3 But proceed.

4 **MR. HESTER:** Well --

5 **THE COURT:** I've -- I've indicated, you know, my
6 concern.

7 **MR. HESTER:** So, Your Honor, so among these states
8 that we're talking about, there's one group of states that
9 requires an affirmative statement to support a claim of
10 negligent misrepresentation. And that includes Colorado,
11 Maryland, Georgia, North Carolina, Ohio, Texas, and Wisconsin.

12 **THE COURT:** Right. Okay.

13 So -- try to circuit this. As I understand the briefing,
14 defendants -- I mean, plaintiffs are not proceeding on a
15 theory of an affirmative statement; is that correct or not?

16 **MR. JASINSKI:** These plaintiffs are not, Your Honor;
17 that is correct.

18 **THE COURT:** Okay. So the motion is granted with
19 respect to any claim to the extent otherwise argued of
20 affirmative statements, right?

21 So now that's all gone.

22 **MR. HESTER:** Yes, Your Honor. Exactly.

23 And that was where I wanted to go because I do think
24 there's two buckets of states. There's that bucket that I
25 just described. Then there's a second bucket, a group of

1 states -- a smaller group -- that recognizes a claim for
2 negligent misrepresentation by omission, and there's five of
3 those by our count, Connecticut, Pennsylvania, South Carolina,
4 Arizona, and New York.

5 And as to those states, they're very clear that they
6 require a duty to disclose if the claim is negligent
7 misrepresentation through omission.

8 And so just as an example out of -- out of the Connecticut
9 District Court, *Office Furniture Rental v. Liberty Mutual*, 981
10 F.Supp. 2nd 111 at 120. Quote, such a cause of action based
11 on omission arises only if the defendant had a duty to
12 disclose the omitted information.

13 And that is true for all of these five states. In one
14 fashion or another, they recognize the tort of a negligent
15 misrepresentation by omission, but they require a duty to
16 disclose.

17 **THE COURT:** Okay. And will you confirm for me,
18 Mr. Hester, that you actually didn't brief this, right?

19 **MR. HESTER:** And -- and, Your Honor, the reason it
20 wasn't briefed is because it wasn't called out separately in
21 the plaintiffs' brief. They focused on a fraud claim.

22 **THE COURT:** No, you brought the motion.

23 **MR. HESTER:** The original motion -- and just to
24 clarify that, and we're listening to the Court. But the
25 original motion was addressed, we -- we understood, to the

1 statements asserted in the complaint.

2 Then the plaintiffs' opposition brief said, no, we're only
3 alleging -- as to Mr. Zuckerberg personally, we're only
4 alleging claims based on omissions.

5 So then, as I'm sure the Court has discerned, in the reply
6 brief, the briefing switched over to a question of omissions.
7 But just to -- so that the Court understands, we -- we had
8 originally understood that the plaintiffs were asserting
9 personal claims against Mr. Zuckerberger [sic] based on
10 statements he had made, and that was clarified, then, by their
11 opposition brief, that they're only asserting omissions
12 claims. That's why we switched over to address the omissions
13 claims fully in the reply brief.

14 But at that point, the plaintiffs had not called out a
15 misrepresentation by omission claim separately. They had
16 really focused on the fraud claim. That's -- that's the
17 reason --

18 I understand the Court has to address this law, and we
19 take that seriously, and we -- we will take that on board
20 going forward. But that -- that's the reason that we hadn't
21 called out this separate question of the tort of negligent
22 misrepresentation by omission.

23 But I think the key point is you get to the same place,
24 because all of these states that recognize the tort of a
25 negligent misrepresentation by omission require a duty to

1 disclose, which is the heart of our briefing on the fraud by
2 omission claim.

3 **THE COURT:** On the reply.

4 **MR. HESTER:** Yes --

5 **THE COURT:** And I don't have --

6 **MR. HESTER:** -- on the reply.

7 **THE COURT:** And that's always, right, from our
8 perspective, it's a concern because you bring it up in reply
9 so I don't have anything from the plaintiffs to address the
10 legal issues.

11 **MR. HESTER:** Well, we had raised -- we had raised the
12 omission point in the last section of our opening brief, your
13 Honor.

14 That's the -- the last -- the last part of our opening
15 brief did address omission. And then the plaintiffs in
16 their -- in their opposition brief made it very clear that
17 they were confining themselves to omission.

18 That's -- that's at least for the Court the explanation as
19 to how the briefing came out that way.

20 But I think at the end of the day, the Court is getting
21 the same information because the core issue before the Court,
22 both on this negligent misrepresentation by omission theory
23 and on the fraudulent omission theory, is the same. It's the
24 exact same issue, which is duty to disclose.

25 And that gets to the second question the Court raised,

1 which is, is there a need to undertake a choice of law
2 analysis. And we submit there's not, because the duty to
3 disclose law across the country is essentially identical.

4 And there's not going to be a meaningful substantive
5 difference or a meaningful outcome determinative difference in
6 law between states on this question of duty to disclose.

7 So we think that the Court does not need to engage in this
8 analysis because under the law of any of these states, the
9 duty to disclose analysis is the same.

10 **THE COURT:** All right. Let me stop you.

11 And, Mr. Jasinski -- did I say that right?

12 **MR. JASINSKI:** You did, Your Honor. You said it
13 correctly.

14 **THE COURT:** Your response so far.

15 **MR. JASINSKI:** Yes, Your Honor.

16 I actually agree with -- with many of the things that my
17 adversary said. I think working backwards, the plaintiffs
18 agree that the Court does not need to engage in a choice of
19 law analysis at this time.

20 And -- and I would also agree that I think the central
21 question is with respect to duty. One of the questions the
22 Court had posed in its order was the extent to which there
23 were some states that articulated a duty of care versus a duty
24 to disclose. I think that's actually a distinction without a
25 difference.

1 It arises in the case law because sometimes the courts are
2 asking whether when somebody is speaking, if that person has
3 a -- a duty of care to speak accurately. That can also --
4 that stems from the Restatement Section 552.

5 There can also be a duty of disclosure, but Restatement
6 Section 551 also characterizes that as a duty of care, so
7 I'm -- it's a long-winded way of saying I think we agree that
8 the principal question is with respect to duty. That is true
9 for the fraudulent omission claim, and it is true for the
10 negligent misrepresentation omission claim.

11 Where I would disagree is on the sort of count of states.

12 **THE COURT:** Okay. So let's -- before you move to
13 that, do we then -- do you also agree that it is a distinction
14 without a difference in terms of the Court's analysis of
15 states that use the phrase "duty of care" versus those that
16 say a "duty to disclose"?

17 **MR. HESTER:** I would adjust it slightly, Your Honor.

18 As we read the cases, the duty of care concept applies in
19 the context of affirmative statements. So in relation to the
20 states in that first bucket where there's a requirement for an
21 affirmative statement to support a claim of negligent
22 misrepresentation, that's where the duty of care becomes the
23 controlling principle.

24 The -- so just with that adjustment, Your Honor, I
25 certainly agree that ultimately, the question is duty of

1 disclosure, and the restatement in some cases fold into that a
2 reference to duty of care, but ultimately, the question
3 remains, is there a duty of disclosure.

4 You could have, for instance, within a fiduciary
5 relationship a question whether the fiduciary behaved with
6 adequate care. But ultimately, it still is the question of
7 duty of disclosure.

8 **THE COURT:** All right.

9 Let's -- let's focus on duty of disclosure first.

10 I know --

11 **MR. JASINSKI:** Would you like to hear from me on
12 which states, Your Honor, in terms of my disagreement with
13 respect to negligent omission?

14 **THE COURT:** Okay. So with respect to negligent
15 omission, I have from the defendants -- their list is
16 Connecticut, Pennsylvania, Arizona, South Carolina, and
17 New York.

18 **MR. JASINSKI:** Correct.

19 **THE COURT:** And yours is what?

20 **MR. JASINSKI:** Let me tell you the states that I
21 think we would acknowledge do not recognize negligent
22 omission: California, Georgia, and Ohio. We think there
23 is -- and we certainly agree that Arizona, Connecticut,
24 New York, Pennsylvania, and South Carolina do recognize it.
25 And we think that the -- the balance of states, which if I

1 have my list right, would be Colorado --

2 **THE COURT:** Hold on. Hold on.

3 **MR. JASINSKI:** Yes.

4 **THE COURT:** So you agree that those that recognize
5 include Connecticut, Pennsylvania, New York, and
6 South Carolina. So you don't agree with Arizona?

7 **MR. JASINSKI:** We do agree with Arizona.

8 **THE COURT:** Do you agree with all five of theirs?

9 **MR. JASINSKI:** With respect to states that
10 acknowledge -- we think there are others that do as well.

11 **THE COURT:** Okay. And the others that you think
12 acknowledge it?

13 **MR. JASINSKI:** Colorado, Maryland, North Carolina,
14 Texas, Virginia, and Wisconsin either acknowledge it or have
15 not answered the question in the negative.

16 **THE COURT:** Okay. So what I am going to want after
17 this is over is your list. Don't want the argument. I don't
18 need the argument. If I need argument, I'll ask you for it.

19 **MR. JASINSKI:** Yes, Your Honor.

20 **THE COURT:** What I want is your best cases on each
21 side -- and, actually, your best case, no more than two per
22 state -- that -- upon which you believe that the claim for
23 negligent misrepresentation does not exist on the defendants'
24 side and does exist on the plaintiffs' sides with respect to
25 that next set of six states. So Colorado, Maryland,

1 North Carolina, Texas, Virginia, and Wisconsin.

2 Okay?

3 **MR. JASINSKI:** Yes, Your Honor.

4 **MR. HESTER:** And, Your Honor, I assume it's not
5 helpful to just start reading cases off today, that it would
6 be better, more productive, if we do that later in the -- in
7 the supplemental briefing.

8 **THE COURT:** I think it -- it's just -- I'm hoping you
9 already have them, that you're not going to go do research.

10 I actually have a whole list of cases, too. It's -- it
11 would be better and certainly more efficient --

12 **MR. JASINSKI:** Yes.

13 **THE COURT:** -- to just file the one page with the
14 list for those states.

15 And there will likely be more of these things to do, so
16 this is just the first in a litany.

17 Okay. So let's -- let's, then, talk about -- there is
18 some agreement at least with respect to -- well, I guess the
19 question -- before we go back to the states upon which we
20 agree there is a claim, is the analysis any different,
21 Mr. Jasinski, for the other six that you've identified?

22 **MR. JASINSKI:** With -- with respect to any portion of
23 the -- the theory of negligent omission? I just want to make
24 sure I understand the Court's question.

25 **THE COURT:** Yes.

1 **MR. JASINSKI:** I don't -- I don't believe so.

2 I think at the end of the day, the question, again, that
3 is really applicable to both the negligent omission theory and
4 the fraud by omission theory is the existence of the duty of
5 disclosure.

6 **THE COURT:** Okay.

7 **MR. JASINSKI:** And I think that that analysis will
8 apply with equal force to all of those states. And we don't
9 perceive there to be a -- a difference in -- a material
10 difference in the way that states approach that question.

11 I think -- I think we agree with opposing counsel on that.

12 **THE COURT:** Okay.

13 **MR. HESTER:** And -- And we agree with that, Your
14 Honor.

15 We do think the duty of the disclosure is the core
16 principle and the core question in these states, both with --
17 with respect to fraudulent omission and negligent omission.

18 **THE COURT:** Okay. So -- so let's talk about duty,
19 then.

20 We'll go to you, Mr. Hester.

21 **MR. HESTER:** Okay, Your Honor.

22 A duty to disclose requires a transactional or fiduciary
23 relationship between the parties, what the courts invariably
24 refer to as a special relationship.

25 And I think the *LiMandri* case that we've cited in our

1 reply brief, 52 Cal App. 4th, 326 at 337, states it very well.

2 And I'll just give a couple of quotes for the court.

3 First, quote is a matter of common sense, such a relationship
4 can only come into being as part of the result of some sort of
5 transaction between the parties.

6 And then the Court goes on to say, quote, a duty to
7 disclose may arise from the relationship between seller and
8 buyer, employer and prospective employee, doctor and patient,
9 or parties entering into any kind of contract.

10 And then the Court goes on to say, quote --

11 **THE COURT:** Can you address -- and I think generally
12 speaking, many states have this special relationship issue.
13 And I don't think --

14 Well, let me just ask the plaintiffs. You're not alleging
15 a special relationship, are you? And you're not alleging that
16 you could allege a special relationship, are you?

17 **MR. JASINSKI:** Well, I guess it depends on what a
18 "special relationship" is, Your Honor, and -- and that's
19 important. We don't allege a fiduciary relationship, for
20 sure.

21 We -- we really allege two -- two grounds for the way in
22 which the -- the duty arose here. One is that we believe that
23 Mr. Zuckerberg was an active participant in the tort itself;
24 that is in and of itself either a ground to recognize a duty
25 or effectively an exception to the duty requirement, as Judge

1 Chen found in the *In re Chrysler Dodge EcoDiesel* case, so that
2 that's point 1 I want to make.

3 Point 2 is that there is a relationship here consistent
4 with the --

5 **THE COURT:** Has anybody other than Judge Chen found
6 an exception to the special relationship requirement?

7 **MR. JASINSKI:** Well, the way Judge Chen -- I -- I
8 guess I don't want to call it an exception. I'm going to
9 answer the question "yes," and I'm -- actually, I'm going to
10 answer it no because I'm looking at another Judge Chen case,
11 so I don't know the answer to that question.

12 But let me -- let me articulate how it's described.

13 **THE COURT:** Slow down.

14 **MR. JASINSKI:** Yes, I'm sorry.

15 In the *EcoDiesel* case, what Judge Chen said was that an
16 affirm act of concealment by the defendant effectively negates
17 the duty to disclose requirement, i.e., there is a
18 difference --

19 **THE COURT:** Yeah, you just need to breathe. Remember
20 to breathe.

21 And it's been a really long week for me, so it would be
22 helpful for me not to have to -- they're getting me more
23 coffee. It would be helpful for me if you didn't speak so
24 fast.

25 **MR. JASINSKI:** Apparently, I should have had less.

1 I'll start over.

2 Judge Chen said, an affirmative act of concealment by the
3 defendant effectively negates the duty to disclose
4 requirement; i.e. there is a difference between silence where
5 a duty to disclose is required, an act of concealment, where
6 there is no such requirement.

7 And in the *In Re: MyFord Touch* case, I think Judge Chen
8 articulated it a little differently, noting that when the
9 defendant actively conceals a material fact from the
10 plaintiff, that is a circumstance from which a duty to
11 disclose can arise.

12 But I think equally important is the fact that under
13 the -- the active participant theory of -- of corporate
14 officer liability, the -- it is the -- the officer who is
15 participating in the company's tort.

16 **THE COURT:** So let's -- let's talk a little bit about
17 this corporate officer responsibility doctrine.

18 Is it a separate and distinct doctrine that supplants
19 duty? Because -- and, you know, I'm not sure I have really
20 sufficient briefing on this issue either because it's a --
21 personal liability under that doctrine seems to be a -- a
22 separate analysis from whether a duty exists under a common
23 tort.

24 **MR. JASINSKI:** I'd agree. I would agree. I --
25 because I think the question is --

1 **THE COURT:** Yeah, but then it should be separately
2 argued. I'm talking about --

3 **MR. JASINSKI:** I --

4 **THE COURT:** -- duty.

5 **MR. JASINSKI:** Fair enough, Your Honor.

6 And I think because of the way that Judge Chen articulated
7 it, I wanted to describe that for you. But I will --

8 **THE COURT:** I understand that it's out there, and
9 it's on my list of things to talk to you all about.

10 But the duty analysis is a different analysis.

11 **MR. JASINSKI:** So I will focus on that, Your Honor.

12 In terms of a -- a duty that Mark Zuckerberg owed separate
13 and apart from any participation in his company's tort, we
14 believe that arises by virtue of the relationship that he
15 formed with the users of his platform given his outsized role
16 at this company and in -- and his prominence in essentially
17 becoming the face and voice of the company.

18 He is a household name, unlike any other CEO. I gather
19 most Americans could not tell you who the CEO of Proctor &
20 Gamble is or General Motors or, for that matter, TikTok.

21 But the facts against Mr. Zuckerberg, I think, are more
22 persuasive than those against -- I'm so sorry --

23 Mr. Marchionne, was the CEO of Chrysler, Fiat in *EcoDiesel*.

24 And the plaintiffs alleged a misrepresentation claim and also
25 an omission claim against him. And Judge Chen concluded that

1 that claim should survive a motion to dismiss because
2 Mr. Marchionne not only had signed off on the company's
3 statement, but it was a reasonable inference that he was
4 involved in and knowledgeable about what was happening.

5 **THE COURT:** So -- so you -- you agree that there's no
6 fiduciary relationship, right?

7 **MR. JASINSKI:** I agree.

8 **THE COURT:** And you agree that there's no
9 confidential relationship, right?

10 **MR. JASINSKI:** I agree.

11 **THE COURT:** So what you're arguing is that there is
12 some close relationship that one -- I mean --

13 **MR. JASINSKI:** It --

14 **THE COURT:** What is the -- right, what is -- what is
15 the element under the law that these facts that you're
16 alleging falls under?

17 **MR. JASINSKI:** When you look at the duty analysis in,
18 for example, the *In re Volkswagen Timing Chain* case, and the
19 Court surveyed many statements there and recognized a duty to
20 disclose where the defendant possesses exclusive or superior
21 knowledge or actively conceals omitted information.

22 The Court looked at some other states, Georgia, Ohio,
23 South Carolina, and Texas, saying there is a duty to impose
24 known safety defects.

25 Mark Zuckerberg was well aware of all of the defects in

1 this case. I don't think there's any question that the
2 complaint sufficiently alleges that.

3 **THE COURT:** The issue with respect to superior
4 knowledge that was discussed in those cases, wasn't it
5 discussed in the context of the entity and not the person?

6 **MR. JASINSKI:** Not in *EcoDiesel*. I think in
7 *EcoDiesel*, it was with respect to both. I think I would
8 agree, Your Honor, in the *Timing Chain* case and the *In Re*
9 *MyFord Touch* case that I mentioned earlier.

10 There are other cases we've cited, including the *Dean vs.*
11 *Beckley* case, which involved a warranty for an RV and
12 statements made by the owner of the company sort of suggesting
13 that the manufacturer was solvent and -- when he had knowledge
14 that that wasn't the case and the warranty was going to be
15 worthless.

16 And so in that context, you have a -- someone with
17 superior knowledge who is making statements -- and we do rely
18 on the fact that statements were made. I -- we're not --
19 these plaintiffs are not suing because they relied on any of
20 the express statements by Mr. Zuckerberg, but the -- the cases
21 are uniform that when a defendant makes a partial
22 representation but suppresses some material facts, that a duty
23 to disclose exists.

24 So I think you -- you do -- the relationship here is by
25 virtue of the fact that these plaintiffs are users of

1 Mr. Zuckerberg's company's platforms. That is true. But that
2 is also true in other cases, like the RV case I mentioned and,
3 certainly, the *EcoDiesel* case where employees, in particular
4 officers, are charged with a duty based upon their superior
5 knowledge and their decision to speak on the topic.

6 **THE COURT:** All right. Let me get a response from
7 Mr. Hester, especially on the issue of -- of superior
8 knowledge.

9 **MR. HESTER:** Yes.

10 **THE COURT:** And what I would also say is there are --
11 or appear to be some states that don't reference the issue of
12 duty but reference the issue of foreseeability.

13 **MR. HESTER:** Well, Your Honor.

14 **THE COURT:** So --

15 **MR. HESTER:** First of all, on this question of
16 superior knowledge, I think counsel's argument is confusing
17 these two points.

18 One point is whether a corporate entity has some
19 obligation of disclosure, which is what almost all of these
20 car defect cases involve, a corporate entity. And sure, there
21 might be some circumstances where there could be some basis
22 for corporate officer liability, but that's based on a duty of
23 disclosure ultimately of the entity, not an individual.

24 So I do think the -- we have to go back to this first
25 principle that when the plaintiffs are suing Mr. Zuckerberg in

1 his personal capacity, not based on statements by Meta but
2 based on his own statements and purporting to sue him
3 individually, they have to show a special relationship with
4 Mr. Zuckerberg and --

5 **THE COURT:** Well --

6 **MR. HESTER:** -- they can't base that on specialized
7 knowledge alone.

8 **THE COURT:** What about *EcoDiesel*?

9 **MR. HESTER:** *EcoDiesel* I believe is still the same
10 fact pattern. It's the question of the corporate entity where
11 there's a -- there's a question of corporate officer liability
12 but it flows back through the entity's failure to disclose and
13 acts by the entity.

14 And here, the plaintiffs were very clear in saying that
15 they're not asserting their claim against Mr. Zuckerberg based
16 on his actions as a corporate officer. They're asserting
17 liability against Mr. Zuckerberg personally.

18 And in that setting, superior knowledge can't support a
19 duty to disclose. If that were true, it would be the case
20 that any employee, any senior officer of any company would
21 have a duty to make disclosures to the world. Because, of
22 course, company officers have more knowledge than individual
23 consumers about their company and it -- and that's not the
24 case law.

25 Every case that the plaintiffs rely on in their briefing

1 for the duty to disclose involves the fact pattern of a
2 special relationship, such as a contract or a lease
3 negotiation or some other fiduciary relationship that supports
4 the special relationship.

5 There's no case that the plaintiffs cite where superior
6 knowledge alone without some special relationship supports the
7 duty of disclosure.

8 And, Your Honor, on the point about the states that we're
9 talking about, I -- I continue to go back to the point that in
10 all of these states, whether we're talking about fraudulent
11 omission or negligent misrepresentation by omission, they
12 still -- you still have to establish a duty to disclose.

13 And without the special relationship, that defeats the
14 plaintiffs' claims as a matter of law.

15 And I think, as the Court's questions indicate, the
16 plaintiffs really aren't making an allegation of any facts
17 that would or could support a special relationship under
18 established case law all across the country.

19 And it would be a stunning proposition to think that
20 merely having superior knowledge or having -- I think counsel
21 said an outsized role prominently in public discourse, somehow
22 that creates a duty to disclose to the public.

23 That can't -- that can't be the law, and that's not where
24 the law is all across the country.

25 **MR. JASINSKI:** May I respond, Your Honor?

1 **THE COURT:** You may.

2 **MR. JASINSKI:** I just -- I want to correct, I think,
3 maybe one misimpression.

4 I think I heard Counsel saying something to the effect
5 that we've -- we're not alleging that Mr. Zuckerberg is liable
6 for what his company did. And that's true.

7 But that's not to say that we aren't alleging that he is
8 liable because he was a direct participant in that tort. And
9 I realize Your Honor doesn't want to hear that right now, but
10 I just want to draw that distinction.

11 With respect to the question of superior knowledge, I
12 think in any of the exemplar cases where an individual is --
13 has liability, these -- whether it's a contract or something
14 else, you have in the cases we cited businesses as well.

15 They -- the essence of it -- this is not the notion that
16 CEOs have to go around uttering things about their companies.
17 But when you couple the superior knowledge that Mr. Zuckerbird
18 [phonetic] had -- Zuckerberg has with his role internally with
19 respect to the very defects alleged in the case with the fact
20 that he has spoken repeatedly, publicly, and made repeated
21 assurances about the safety of those products, which is
22 directly at issue in this case, safety being one of the most
23 material things that anybody at a company can talk about.

24 Whether we're viewing this as a sort of independent duty
25 that Mr. Zuckerberg had separate and apart from his company or

1 whether we view it as a duty where he was an active
2 participant in the breach that is -- of his -- by his company
3 is a distinction ultimately without difference. They lead to
4 the same place. We have viewed that as being duty.

5 **THE COURT:** Well, it's a distinction that might make
6 a difference in terms of the theory, and it's better to get
7 the law right now than to wait and have to do it again at
8 summary judgment.

9 So you may have pled alternative theories of relief. That
10 doesn't mean that if one is just wrong that it goes forward.

11 **MR. JASINSKI:** Well, Your Honor -- I don't think
12 they're alternative. I think they are symbiotic.

13 **THE COURT:** So --

14 **MR. HESTER:** May I respond just briefly to that, Your
15 Honor?

16 **THE COURT:** Hold on.

17 So I now understand that you're alleging that he's a
18 direct participant; is that right?

19 **MR. JASINSKI:** Correct.

20 **THE COURT:** And then I guess, Mr. Hester, are you
21 claiming -- well, I -- it's not really briefed 'cause this is
22 on Zuckerberg himself.

23 Is there some notion that Meta doesn't have a duty to
24 disclose?

25 **MR. HESTER:** Your Honor, that's -- that's not an

1 argument we've made, and it's not -- it's not the argument
2 that's at issue here.

3 I -- I think it is really important to keep this
4 distinction between actions by the entity where there's a
5 question of corporate officer liability for actions of the
6 entity versus this assertion that Mr. Zuckerberg himself
7 personally has committed a tort for which the plaintiffs can
8 hold him liable.

9 On that second point, that's where they have to show a
10 special relationship, and they can't.

11 **THE COURT:** I -- I understand.

12 **MR. HESTER:** And on the first point, we understand --
13 we haven't argued the lack of a duty to disclose. And I
14 think, again, the car cases are instructive there, that --
15 that there could be circumstances where a company because of
16 the products or services it provides could, in theory, have an
17 obligation to -- to disclose. But that's different from the
18 question of Mr. Zuckerberg personally.

19 **THE COURT:** Well, let's -- let's move to this
20 alternative theory that I think I hear plaintiffs
21 articulating.

22 So what I hear is that you believe Mr. Zuckerberg should
23 be liable for Meta's alleged nondisclosure under this
24 corporate officer responsibility theory; is that right? But
25 that's derivative from what Meta's -- that's derivative from

1 Meta.

2 **MR. JASINSKI:** Well, I was going to say that that's
3 right, Your Honor. I'm -- I'm struggling with whether it's
4 derivative of Meta, but the -- I guess the point is the same,
5 that -- we viewed it as duty. We viewed it as duty.

6 **THE COURT:** So let me ask a slightly different
7 question to Mr. Hester.

8 Your motion does not -- does not address at this point the
9 inability of plaintiffs to hold Mr. Zuckerberg liable, then,
10 for Meta's alleged activity under this corporate officer
11 responsibility theory, correct?

12 **MR. HESTER:** No, we -- we did address that, Your
13 Honor, in our opening brief.

14 **THE COURT:** But if you don't argue that Meta doesn't
15 have a relationship -- or doesn't have a duty not to
16 disclose -- so I'm going to assume for purposes of argument
17 that they do. Then how is Mr. Zuckerberg not potentially
18 liable under that theory?

19 **MR. HESTER:** Well, Your Honor, in our opening brief,
20 we noted that the plaintiffs had not established a basis under
21 prevailing law all across the country for holding him liable
22 for the actions of Meta as an entity.

23 And the complaint is full of allegations about Meta. And
24 it's only in the short form supplemental complaints that we
25 get allegations of omissions by Mr. Zuckerberg personally. So

1 our point in our opening brief was the plaintiffs had not
2 alleged facts sufficient to establish a basis for holding
3 Mr. Zuckerberg or any other individual officer of Meta
4 personally responsible for the conduct of Meta.

5 And then in opposition, the plaintiff said, and I'll quote
6 from their brief, page 6, they were not suing Mr. Zuckerberg,
7 quote, as an executive of Meta. They said that in their
8 brief.

9 So in our reply -- again, to explain for the Court the
10 reason the briefing has progressed this way, we took that
11 representation. The plaintiffs said they were not suing him
12 as an executive of Meta. They said they were suing him in
13 his -- for his personal conduct. And as we understand that
14 concession from the plaintiffs, they were not asserting a
15 theory of corporate officer responsibility.

16 **THE COURT:** Oh, well, okay.

17 **MR. JASINSKI:** May I be heard?

18 **THE COURT:** A response.

19 **MR. JASINSKI:** Yeah, Your Honor, I disagree with
20 that.

21 What Mr. Zuckerberg argued in his motion was that his mere
22 status as an executive does not confer liability on a
23 corporate officer for alleged conduct of the corporation.

24 That's what he argued.

25 We agree. And we do not contend that Mr. Zuckerberg's

1 mere status as an executive gives rise to liability here.

2 We -- we do argue and -- and, you know, I apologize to the
3 Court if it's not clear, but -- but when we look at the
4 *EcoDiesel* case, for example, we viewed it within the framework
5 of duty.

6 But we do argue the active conduct by Mr. Zuckerberg in
7 the nondisclosure by Meta. And that is what we argue in
8 support of the -- the duty --

9 **THE COURT:** All right.

10 **MR. JASINSKI:** -- active participation.

11 **THE COURT:** Let me -- and there are many allegations
12 that -- that are referenced.

13 Let's assume for purposes of argument that I agree with
14 plaintiffs, that that's -- that it's fair to interpret your
15 briefing as -- as focusing on status as opposed to focusing on
16 the numerous allegations in the complaint that talk about what
17 Mr. Zuckerberg himself was personally doing.

18 Do you have an argument as to why, based upon those
19 allegations, he should not be held potentially liable under
20 the corporate officer responsibility doctrine?

21 **MR. HESTER:** Yes, Your Honor.

22 The -- the point would be that simply alleging actions by
23 a CEO or any other senior officer of a company, which is all
24 the complaint alleges as to Mr. Zuckerberg. It alleges things
25 he did as the CEO of the company. That's not sufficient.

1 **THE COURT:** Well, what is sufficient under the -- I
2 mean, you agree the doctrine exists.

3 **MR. HESTER:** The doctrine exists of corporate
4 officer --

5 **THE COURT:** Right.

6 **MR. HESTER:** -- liability, yes, Your Honor.

7 **THE COURT:** So -- and do all the states -- well, the
8 states that are in play, do those states agree on the legal
9 context for that particular doctrine --

10 **MR. HESTER:** The -- the basic --

11 **THE COURT:** -- from your -- so you -- for
12 Connecticut --

13 **MR. HESTER:** I'm sorry, Your Honor.

14 **THE COURT:** -- Pennsylvania, Arizona, South Carolina,
15 and New York from your perspective?

16 **MR. HESTER:** Well, the -- the basic concepts of
17 corporate officer liability are not meaningfully different in
18 our view across the country.

19 **THE COURT:** Okay. 'Cause you cite to -- well, you
20 cite to Alabama, which isn't in play. I'm not sure why you
21 cite to Alabama. You cite to California, not in play.
22 Massachusetts, not in play.

23 The only one you cite to is New York. So I have no law
24 from you on Connecticut, Pennsylvania, Arizona,
25 South Carolina.

1 Do I understand that your perspective is that all of those
2 states follow New York?

3 **MR. HESTER:** Essentially in -- perhaps not in exactly
4 the same words but the same concept.

5 But we were also relying on what the plaintiffs said in
6 their brief where they said they weren't suing him as an
7 executive.

8 **THE COURT:** That's why --

9 **MR. HESTER:** So I think it's fair to hold them to
10 their concession, Your Honor.

11 If they had gone at it a different way, if they had said,
12 oh, no, our theory is corporate officer responsibility, that
13 would be a different question from the one they framed up.
14 They -- they took great pains to emphasize that they are --
15 that their theory is --

16 **THE COURT:** So.

17 **MR. HESTER:** -- his personal activity.

18 **THE COURT:** Mr. Hester, I'm not going to do this
19 thing multiple times. We're focused on these issues. I could
20 give them leave to amend. It's -- I -- I am only interested
21 in doing things efficiently.

22 So there is no way that any circuit would say to me, you
23 should have granted that motion without leave to amend. No
24 circuit would say that.

25 So even if you're standing here, correct, it doesn't

1 matter, 'cause I'd have to give them leave to amend.

2 **MR. HESTER:** I understand, Your Honor.

3 **THE COURT:** Okay.

4 So then a substantive response, assuming for purposes of
5 argument that they've made the allegations -- I -- it's not
6 clear to me that you can make any more allegations, are there?

7 Is this the entirety of what it is that you're relying on?

8 **MR. JASINSKI:** Well, yes -- at this juncture, Your
9 Honor, that's what we know.

10 And I do want to make note that we have cross-referenced
11 the Attorney General's complaint, which has a number of
12 different allegations about Mr. Zuckerberg's involvement that
13 the master complaint for the personal injury plaintiffs now
14 incorporates by reference various allegations in the
15 Attorney Generals' complaint that has a litany of information.
16 I won't -- I have --

17 **THE COURT:** So I have paragraphs 339 to -63 of the AG
18 complaint.

19 **MR. JASINSKI:** Well, I -- think it's more than that,
20 Your Honor.

21 **THE COURT:** Among others.

22 All right. So are you --

23 **MR. HESTER:** So, Your Honor, I --

24 **THE COURT:** Are you prepared to respond substantively
25 on that topic?

1 **MR. HESTER:** Well, I -- taking the point -- the
2 Court's point about amendment, the point I would make at this
3 stage is we're not faced with sufficient allegations to
4 establish corporate officer liability for the actions of Meta,
5 that the -- the complaint as pled right now is focused on
6 allegations as to Meta's activity.

7 Mr. Zuckerberg, among others, is called out as one of the
8 people who participated in the acts of Meta. And it seems to
9 me that they -- that's not sufficient under the case law to
10 establish liability personally for individual officers.

11 **THE COURT:** All right. And --

12 **MR. HESTER:** We had read the -- we had read the
13 short-form complaints as focusing on something very different,
14 which was omissions purportedly made by Mr. Zuckerberg
15 personally. And that's what they pled as to their claims
16 against Mr. Zuckerberg.

17 **THE COURT:** All right.

18 Does anybody -- or do the plaintiffs disagree with the
19 defendants that the relevant standard for Connecticut,
20 Pennsylvania, Arizona, and South Carolina is the same as
21 New York?

22 **MR. JASINSKI:** For corporate officer responsibility?
23 Yes, Your Honor.

24 **THE COURT:** And there are other states, Colorado,
25 Maryland, North Carolina, Texas, Virginia, and Wisconsin. Do

1 they also comply with the standard articulated by New York?

2 **MR. JASINSKI:** When we looked at each of the states
3 in Your Honor's order from earlier this week, our conclusion
4 is that each of them basically articulates the same standard
5 of active participation in a wrong or authorizing, directing,
6 that it be done. That is -- the -- different words are used
7 in states, but in our view, they mean that.

8 **THE COURT:** Do you agree, Mr. Hester?

9 **MR. HESTER:** I -- I agree, Your Honor.

10 I also did want to emphasize, though, that it is far from
11 clear to me that the question would be governed by the law of
12 these individual states.

13 **THE COURT:** Okay. Well, then why?

14 **MR. HESTER:** Because we're talking about a CEO based
15 in California, a corporation based in California. It's not
16 obvious to me that the law of all these multiple states
17 governs the question of corporate officer liability.

18 That's certainly something -- if the Court's so inclined,
19 I think we've gotten some more clarity on what the plaintiffs'
20 theory is today.

21 If the Court's so inclined, we would ask the opportunity
22 for leave to brief this question of corporate officer
23 responsibility.

24 **MR. JASINSKI:** I --

25 **MR. HESTER:** 'Cause it was not something that was

1 called out in a way that led to briefing on this issue, as the
2 Court has noted.

3 **MR. JASINSKI:** If I may, two responses.

4 First, with respect to the mention of California, I
5 believe California was included on the Court's list, and that
6 is one of the states that we looked at and believe that it has
7 effectively the same participation standard.

8 Two, I -- we do rely and did rely in the brief on the
9 *EcoDiesel* decision. I think that is directly on point here.
10 That was a case in which the allegation was that Chrysler had
11 a defeat device that was designed to circumvent emission
12 standards. And included in that case were allegations that --
13 that there were omissions made and failure to disclose with
14 respect to that defeat device.

15 The Court said it was a reasonable inference that
16 Mr. Marchionne, the CEO, was directly involved with and
17 therefore knowledgeable about what was happening with the
18 *EcoDiesel* engines and the company's concealment of the defeat
19 devices.

20 And in this case, Your Honor, we have allegations that
21 Mr. Zuckerberg was knowledgeable about the very serious safety
22 risks concealed by Meta. The master complaint is replete with
23 allegations including drawn from the AG's complaint.

24 We know going back to 2016, Mr. Zuckerberg received
25 internal research regarding the negative health effects of

1 using Meta's platforms. That's AG paragraph 416.

2 We know that Meta was actively investigating the issue of
3 addiction in 2017. That's the personal injuries plaintiffs'
4 master complaint at paragraph 298.

5 We know that around that same time in late 20- -- I'm
6 sorry -- in late 2018, I believe, Active Daily People was a
7 bigger concern than user well-being for Mr. Zuckerberg. AG
8 paragraph 318 to -22.

9 We know in 2018, Mr. Zuckerberg received a report on under
10 13 users on Instagram. That's AG paragraph 657.

11 In April 2019, Meta's own researchers directly told
12 Mr. Zuckerberg --

13 **THE COURT:** All of this in your brief or not?

14 **MR. JASINSKI:** I can't say for sure that at all of
15 this is in the brief, Your Honor.

16 **THE COURT:** Okay.

17 **MR. HESTER:** And I would say --

18 **THE COURT:** Do you have a perspective --

19 **MR. HESTER:** Sorry, Your Honor.

20 **THE COURT:** -- Mr. Hester, on the laws -- there's a
21 dispute here with respect to which states provide for
22 negligent misrepresentation under an omission theory.

23 The plaintiffs identified six more from your five. With
24 respect to those six, as you stand here, do you have a
25 perspective with re- -- on -- as to the implication of the

1 corporate officer responsibility theory for those six states?

2 Is it all going to be the same?

3 **MR. HESTER:** Your Honor, I -- I would -- I would
4 believe that the case law across the country more or less is
5 going to be the same on corporate officer liability.

6 It's not clear to me that six or eight or nine different
7 laws would apply to this question in any event.

8 I think it's a different issue from the tort of negligent
9 misrepresentation. But if I just caveat that, I don't think
10 the law is going to differ across the states.

11 But I want to emphasize again for the Court, I think this
12 is a -- this is a new point. This is -- this is not the way
13 the plaintiffs argued it in their opposition, because they --
14 they were really not focused on actions by Meta for which
15 Mr. Zuckerberg should help -- be held personally liable, which
16 is the thrust of these car cases. They were focused on a
17 separate question, personal liability for Mr. Zuckerberg
18 separate and apart from liability for Meta.

19 So I -- I would, again, flag that I think this is a --
20 this is a change in approach from what we saw in -- in the
21 plaintiffs' briefing. We understood them to be focusing on
22 the question of Mr. Zuckerberg's personal liability, not
23 dependent upon actions by Meta, the entity.

24 Now they're talking about case law involving car defects
25 and the like where you start with the corporation, and the

1 question is whether the officers get held liable for that
2 corporation's activity. That's a new theory. That's not what
3 they briefed.

4 **THE COURT:** All right.

5 **MR. JASINSKI:** May I be heard on that, Your Honor?

6 **THE COURT:** Your perspective is you did.

7 **MR. JASINSKI:** Yeah. Your Honor, our perspective --
8 I'm sorry.

9 **THE COURT:** So --

10 **MR. JASINSKI:** Well, but I --

11 **THE COURT:** -- going to get this teased out, so I
12 don't need to hear -- you know, I don't need to hear the
13 bickering about did I, did I not.

14 **MR. JASINSKI:** And I don't mean it to be bickering.
15 I don't mean it for that purpose.

16 What I -- what I mean is to say that we do allege conduct
17 by Mr. Zuckerberg. We a- -- which is his active
18 participation, so I -- what I'm struggling with as I hear my
19 colleague --

20 **THE COURT:** Let's --

21 **MR. JASINSKI:** -- is that those allegations are not
22 intended to exist in a vacuum. They are his conduct, of
23 course.

24 **THE COURT:** Well, they thought what you were doing is
25 that you were alleging that under affirmative

1 misrepresentation arguments. We now know that's not the case,
2 so we've made some progress.

3 Let's move to the issue of reliance. Reliance tends to be
4 a very fact-specific issue.

5 So from the defendants' side, why would I resolve that on
6 a motion to dismiss? Typically don't resolve those kinds of
7 issues on a motion to dismiss.

8 And then on the plaintiffs' side, are the plaintiff fact
9 sheets going to be more specific about which of these
10 statements or how these individuals relied on Mr. Zuckerberg's
11 statements and/or omissions? That's what I'd like to hear
12 about.

13 Mr. Hester, we'll start with you.

14 **MR. HESTER:** Thank you, Your Honor.

15 So we do see this as a separate basis for dismissal
16 putting aside this duty of disclosure point we've already
17 discussed, the failure to meet the pleading requirements of
18 Rule 9(b) for a fraud claim.

19 The cases recognize there's some relaxation of Rule 9(b)'s
20 requirements for an omissions claim because it's hard to plead
21 the time and place of an omission, of course.

22 **THE COURT:** Right.

23 **MR. HESTER:** But there's -- heightened pleading
24 requirements still apply. And I would cite the Court to
25 *Kearns v. Ford Motor Company*, which is in our reply brief.

1 **THE COURT:** And do you agree that all of the states
2 have a consistent view on this issue?

3 **MR. HESTER:** I -- I believe so. I also would think
4 on this particular question, I think it's a question of
5 federal -- federal law, the pleading standards that would
6 apply here.

7 **THE COURT:** Okay.

8 (Simultaneous colloquy.)

9 **MR. HESTER:** So there's two pieces that I think
10 really demonstrate where the plaintiffs fall short in their
11 pleadings.

12 They have to plead that the plaintiffs would have known of
13 the omitted statements if made. That is a requirement. And
14 we cite in our opposi- -- in our reply brief the *In Re: ZF-TRW*
15 *Airbag Control* case where the Court says a plaintiff alleging
16 fraud must still be able to show she would have been aware of
17 the information had it been disclosed.

18 And the plaintiffs concede this. In their reply brief,
19 they -- sorry. In their opposition brief, they say that the
20 plaintiffs must still plausibly allege that they would have
21 been aware of the omitted information had it been publicly
22 revealed. And there is no allegation that they would have
23 known of the statements if made. And so they fall short of
24 Rule 9(b) on that basis alone.

25 They -- they make a generalized argument that, of course,

1 they would have known. But that's not enough under Rule 9(b).

2 There's a separate problem with their pleading aside from
3 that lack of reliance. They also have to plead that they
4 would have changed their behavior if they'd known the
5 information. And that's directly contradicted by the
6 complaints. Because the plaintiffs in their opposition brief
7 make the point. They highlight the point that the information
8 that they allege was concealed by Mr. Zuckerberg was, quote,
9 actually revealed by whistleblower Frances Haugen. That's in
10 their opposition page 15.

11 Yet, the plaintiffs also allege that they continue to use
12 Meta's services to this day.

13 So that -- they cannot allege reliance on these facts
14 because they themselves say the omitted information that they
15 say was omitted was disclosed. And they continue to use the
16 service.

17 So that fails the Rule 9(b) requirement of showing that
18 they would have changed their behavior. That's one of the
19 requirements for their claim.

20 And it fails even under the more relaxed standards of
21 Rule 8. It's implausible under *Twombly* because they're
22 talking about information that they say they would have done
23 something different, yet they continue to use the service.

24 **THE COURT:** All right. Response?

25 **MR. HESTER:** So I think in two respects their --

1 their pleading falls well short.

2 **THE COURT:** Response.

3 **MR. JASINSKI:** Yes, Your Honor.

4 Basic principles, we agree that -- that there are
5 essentially two criteria for reliance, the opportunity to
6 receive information, and that the plaintiff would have behaved
7 differently. So let me take those in turn.

8 The -- with respect to the opportunity to receive
9 information, in the context of a -- an omission case like
10 this, in the *Daniel vs. Ford* case, the Ninth Circuit indicated
11 that the -- the essence is whether there is a communication
12 channel through which the information can be provided to the
13 plaintiffs.

14 And in the *EcoDiesel* case, Judge Chen concluded that given
15 the issue in that case and the concealment, it was -- it was
16 something that received nationwide media attention. That is,
17 of course, the case here as well.

18 Moreover, the plaintiffs are users of the platform. If
19 Mr. Zuckerberg had made a disclosure, he could have done so
20 through the platform. If he had made a disclosure, it would
21 have been communicated widely nationwide. And you'd, frankly,
22 have to be living under a rock not to hear it. So we think
23 the *EcoDiesel* case is on point.

24 As to the -- forgive me for the -- missing the acronym,
25 the *ZF-TRW* case, I would -- I would note that the Court in

1 that case granted leave to amend. And so if the Court
2 concludes that we haven't alleged enough here -- although this
3 is a issue of fact, I agree with Your Honor -- I don't think
4 that the -- the answer would be a dismissal with prejudice. I
5 think it would be more of an opportunity to articulate the
6 various channels through which they may have heard it.

7 But I think that -- I think that we -- that it's
8 sufficient to say that this information was -- was so
9 important, so material that that, in fact, would have made its
10 way to these plaintiffs.

11 With respect to the -- the aspect of behaving differently,
12 the plaintiffs do allege that they would behave differently if
13 they had had the information in time.

14 The very essence of this case is that these products are
15 designed to be addictive. The notion --

16 **THE COURT:** So when was the Haugen disclosure?

17 **MR. JASINSKI:** I believe it was in the fall of '21,
18 Your Honor.

19 **THE COURT:** So is there going to be some notion by
20 the plaintiffs that given that they were potentially on notice
21 in 2021, that anything that happened after 2021 is not in
22 play?

23 **MR. JASINSKI:** You mean a motion by the defendants?

24 **THE COURT:** No, by the plaintiffs. If the issue is,
25 is it right that the law says that you would have had to have

1 changed your behavior, and -- I mean, that's -- that was his
2 second ground.

3 **MR. JASINSKI:** Well, my -- my point, Your Honor, is
4 that the very nature of the case here, the claim as an
5 addiction case, is that it's not so simple as to say that
6 these plaintiffs could at that point change their behavior.

7 Continued use by somebody who is addicted to the product
8 does not suggest that -- that they wouldn't have behaved
9 differently if they had had important information about the
10 design of these products earlier on.

11 And -- and completing ceasing use also is not necessarily
12 the only way in which somebody could change behavior here.
13 It's not the only way in which a parent could change behavior
14 in terms of policing the use of the platforms.

15 So I don't -- I think that the defendant, Mr. Zuckerberg
16 paints with too broad a brush.

17 **THE COURT:** Is that an accurate statement of the law,
18 though, that there has to be some change in behavior to show
19 reliance?

20 **MR. JASINSKI:** Well, I don't think that that is --
21 Sorry, Your Honor.

22 I don't think that there -- let me ponder that for just a
23 moment, Your Honor.

24 **THE COURT:** Do the laws of the states at play with
25 respect to the reliance issue -- so not the pleading issue,

1 but the reliance issue, do they all indicate that this is --
2 that there has to be a change in behavior to show reliance?

3 **MR. HESTER:** Well, Your Honor, I can't say that I've
4 canvassed that particular question in each of the states.

5 We understood this to be a general principle that, in
6 fact, wasn't disputed.

7 I would point the Court to the *Haddad v. Merck* case that
8 we cite in our briefs out of the Central District of
9 California where the Court found no reliance where the
10 plaintiff continued to use a drug after withheld information
11 was disclosed. We had viewed that as a general principle, so
12 I -- I would believe that it would be the same, but I haven't
13 canvassed it yet, Your Honor.

14 **MR. JASINSKI:** And I can answer Your -- Your Honor's
15 question directed to me and distinguish, I think, that case.

16 That -- that case involved a pharmaceutical where the
17 question was whether the prescribing physician had changed his
18 prescribing behavior based upon a black box warning, and the
19 answer was no. And so there was no reliance on the omitted
20 information because the prescriber didn't change his
21 prescribing.

22 Again, I go back to the point here that we have a product
23 that is designed to be addictive and that the only way in
24 which one could change behavior is not necessarily ceasing
25 use, so the fact that --

1 **THE COURT:** That wasn't my question. My question is,
2 does the analysis require the -- of the elements of reliance
3 me to consider whether there is some kind of evidence of
4 changed behavior?

5 I understand there could be different views of what that
6 would mean. But is it a general and universal principle for
7 all the states in play with respect to reliance?

8 **MR. JASINSKI:** The -- yes, is going to be my answer.
9 And I want to qualify it a little by saying at the pleading
10 stage, Your Honor, many courts have found that the reliance
11 can be inferred by the materiality of the omitted information.

12 And what I would offer to the Court is I don't think that
13 it -- that the -- that Mr. Zuckerberg can rebut that simply by
14 saying in the context of the allegations here that these
15 plaintiffs continued using the product. It's not as simple as
16 the prescribing pharmaceutical case.

17 **THE COURT:** Okay.

18 **MR. JASINSKI:** So the Court --

19 **THE COURT:** Any response?

20 **MR. HESTER:** Yes, Your Honor. I think there's two
21 separate questions. One is materiality which can be inferred
22 by the nature of the allegedly withheld information. Separate
23 question is the plaintiff has to establish that he or she
24 would have done something different had the information been
25 disclosed. It's, otherwise, an implausible claim.

1 **THE COURT:** Well, what --

2 (Simultaneous colloquy.)

3 **MR. HESTER:** -- under rule 8 or Rule 9.

4 **THE COURT:** What happened in the tobacco cases? Was
5 there -- was this addressed in the tobacco cases where you
6 have an addiction and people -- and the reason I use that,
7 right, is that people understand. It's -- when you're dealing
8 with certain kinds of issues, easier said than done.

9 **MR. HESTER:** Well, Your Honor --

10 **THE COURT:** I have defendants who come in here every
11 week who are ordered not to use meth or fentanyl or something
12 like that, or cocaine, and they're trying, but it's hard.

13 **MR. HESTER:** Couple of observations. Just so the
14 record is clear, Your Honor -- and I know we're not talking
15 about the factual issues now -- we don't think the plaintiffs
16 can prove the addiction.

17 But put that aside, I think Counsel's comments reflected
18 that there are other kinds of changes that even he
19 acknowledges could have been made. Parents could have
20 monitored the use of social media services differently. Could
21 have made decisions to reduce --

22 **THE COURT:** I asked about tobacco cases. Do you have
23 any information?

24 **MR. HESTER:** And -- I don't have -- I don't have
25 information, Your Honor. I would submit it's a different fact

1 pattern from this. I don't think they --

2 **THE COURT:** How is it different? If it's an
3 addiction issue and the question is reliance, and what they're
4 arguing on their side is given the nature of the alleged
5 injury, doing something to change your behavior has to be
6 viewed in these kinds of cases differently because of the
7 addiction, sounds like the tobacco cases are an accurate
8 analogy.

9 **MR. HESTER:** I think they're different in this
10 respect, Your Honor.

11 A lot of conduct that the plaintiffs are alleging they
12 would have done differently involves the parents, the people
13 who are not even alleging an addiction.

14 Put aside the fact that we don't think they can prove
15 addiction, but we're talking here about teens. And the
16 question is parents who say, "I would have done something
17 different vis-a-vis my teen." The parents are not saying
18 they're addicted. The parents are saying, "I would have
19 monitored the behavior differently." That's different from
20 somebody who's smoking.

21 **THE COURT:** I take it you have kids.

22 **MR. HESTER:** I do. They've kept me busy for a long
23 time, Your Honor.

24 **THE COURT:** They keep you busy and sometimes they
25 know more than you do, right?

1 **MR. JASINSKI:** Your Honor, if I may?

2 **THE COURT:** Technology.

3 Go ahead.

4 **MR. JASINSKI:** Couple responses to that.

5 First -- first of all, working backwards, with respect to
6 the parents, the kids are not the -- their -- their age isn't
7 static. The -- the opportunity to intervene has closed for
8 these children.

9 So for -- for those early users of this, the idea that --
10 that the parent could make some change when hearing of the
11 information in, say, 2021, it's not -- it's not necessarily
12 relevant anymore.

13 **THE COURT:** Depends on the plan.

14 **MR. JASINSKI:** And that is a fact question. And --
15 ultimately. And -- and that goes to the PSF question that
16 Your Honor asked, the answer is yes. And I think these are
17 exactly the types of questions that the defendants are going
18 to be able to ask. And it is true that these issues came up
19 in the tobacco litigation, and they're going to ask many
20 questions about the opportunity these plaintiffs had to hear
21 information, what they heard, when they heard, what they did.
22 They're obviously going to probe the addiction issue.

23 These are all fact issues that are not appropriate for
24 disposition at the motion to dismiss pleading stage.

25 And my understanding is that -- from having been passed a

1 note from my colleagues -- that, yes, in the tobacco cases and
2 in the *Juul* case, the -- the issue of -- of reliance came up
3 in the similar context. And it -- and because of the
4 addiction issue, it's not something that can be answered at
5 the motion to dismiss stage.

6 **MR. HESTER:** Your Honor, just very briefly in this,
7 though. The Court is faced with a pleading that's
8 implausible. The -- the short-form complaints in one of two
9 sentences say, "had we known of this information, we would
10 have acted differently." Yet, the information has been known
11 to them for years.

12 And so it's an implausibility problem. It is a pleadings
13 problem. I understand there's a separate question --

14 **THE COURT:** The short --

15 (Simultaneous colloquy.)

16 **MR. HESTER:** -- factually.

17 **THE COURT:** Are the short-form complaints going to --
18 or the plaintiff fact sheets going to flush the issue out?

19 **MR. JASINSKI:** That's my understanding, Your Honor.
20 And I -- I don't think that these short-form complaints are
21 implausible. It means something that they would have made a
22 change at the time, and the timing of that change is -- is
23 meaningful. And there are specific allegations by a number
24 of --

25 **THE COURT:** Okay.

1 **MR. JASINSKI:** -- these plaintiffs on that front.

2 **THE COURT:** All right. We need to move to some other
3 issues in today's conference.

4 Anything else you want me to consider?

5 **MR. HESTER:** No, I think, Your Honor, we've -- we've
6 handled it pretty well. Thank you.

7 **MR. JASINSKI:** When would you like our list, Your
8 Honor, with the cases for the states and negligent omission?

9 **THE COURT:** Well, is a week sufficient?

10 **MR. JASINSKI:** Yes.

11 **MR. HESTER:** Yes, Your Honor.

12 **THE WITNESS:** All right. One week.

13 Thank you.

14 **MR. JASINSKI:** Thank you, Your Honor.

15 **MR. HESTER:** Thank you.

16 **THE COURT:** Okay. Next, let's go ahead and -- let's
17 move to the bellwether questions and protocols.

18 And I see at the mics, Ms. Hazam.

19 **MS. HAZAM:** Good morning, Your Honor.

20 **THE COURT:** Good morning.

21 **MS. PIERSON:** Good morning. Andrea Pierson, Your
22 Honor.

23 **THE COURT:** All right. Ms. Pierson.

24 Okay. So with respect to this issue, I have a number of
25 questions. I charted out your various -- and I just want to

1 go through those first.

2 And this is coming from Docket 618. So you indicate
3 separately that --

4 And I think we're at 223 cases; is that correct?

5 **MS. HAZAM:** Of the personal injury cases, I believe
6 that's close. My numbers from this morning are 218. It is
7 obviously a shifting landscape, which may be one reason the
8 parties are slightly apart on certain figures. But as of this
9 morning, I had 218.

10 **MS. PIERSON:** Your Honor, we have short-form
11 complaint data from 223 personal injury plaintiffs.

12 **MS. HAZAM:** I would note, Your Honor, that there are
13 occasionally dismissals.

14 **THE COURT:** Right.

15 **MS. HAZAM:** Which could account for the difference,
16 although I do not know that.

17 **THE COURT:** I need to add that to the list.

18 Did we get a resolution of how to deal with the -- sent an
19 email. Can we deal with that quickly, maybe, at the mic?

20 **MS. ANDERSON:** Jennie Anderson on behalf of
21 plaintiffs. We've begun the -- conferring on that issue, and
22 we hope to submit -- be able to submit something to the
23 Court -- hopefully a stipulation -- shortly.

24 **THE COURT:** Okay. Is there anything I need to weigh
25 in on today? If not, I can put it on the list; we can discuss

1 it later.

2 **MS. SIMONSEN:** Nothing from defendants'
3 perspective -- Ashley Simonsen for the Meta defendants -- that
4 Your Honor needs to weigh in on.

5 **MS. ANDERSON:** Agreed.

6 **MS. SIMONSEN:** Thank you, Your Honor.

7 **THE COURT:** All right.

8 So defendants say that they've got 28 cases where
9 plaintiffs do not allege addiction or compulsive use, and
10 plaintiffs identify 24.

11 **MS. HAZAM:** Your Honor, we actually have an update to
12 that figure in part because we were surprised see that many
13 cases not alleging addiction, even though they remain a very
14 small minority -- in our view not representative -- we
15 inquired with the firms whose short-form complaints so
16 indicated.

17 And our understanding, based on information received just
18 this morning, is that at least 20 of those will be amended to
19 allege addiction and that they were errors in short-form
20 complaints, largely those filed early on.

21 **THE COURT:** So --

22 **MS. HAZAM:** -- have certain counsel here today who
23 could attest to that themselves.

24 **THE COURT:** All right. That's fine.

25 So you think it's going to be somewhere in the

1 neighborhood of 45?

2 **MS. HAZAM:** Forty-five -- I'm sorry.

3 **THE COURT:** I have 24, and then you said you're going
4 to add 20?

5 **MS. HAZAM:** No. I'm sorry. The opposite, Your
6 Honor.

7 These were mistakes in at least 20 of these short-form
8 complaints in not alleging addiction. We have not reached the
9 final 3 to 4. It may well be the case with them as well, but
10 I cannot say that with any certain today. But we are left
11 with approximately 3 to 4 that will not be alleging addiction
12 after those amended short-form complaints are filed.

13 **THE COURT:** Okay.

14 **MS. PIERSON:** Your Honor, if it's helpful, I've
15 brought a chart of the statistics that we compiled from the
16 short-form complaints that I'd be happy to share with the
17 Court and with plaintiffs' counsel.

18 **THE COURT:** We'll turn on the ELMO, and you can put
19 it on the ELMO so --

20 **MS. PIERSON:** Sure.

21 **THE COURT:** -- everybody can see it.

22 So what I have again from your statement at 618, 29 cases
23 where -- defendants indicate there are 29 statements where
24 there are allegations of suicide. Plaintiff didn't respond at
25 all.

1 **MS. HAZAM:** I can respond now, Your Honor, if you'd
2 like. As of this morning, we had counted 30. Those do not
3 include 3 wrongful death cases that are not suicide cases but,
4 instead, challenged cases.

5 **THE COURT:** Wrongful death cases, defendants say
6 five, and you didn't respond. You now say three.

7 **MS. HAZAM:** Three. That is the total we had as of
8 this morning.

9 **THE COURT:** Allegations of body dysmorphia, you don't
10 seem to be that far off, and it could be that you're looking
11 at different datasets. Defendants say 53, plaintiffs say 49.

12 And then allegations of sleep disorders, again, not that
13 far off. Defendants say 50, plaintiffs say 45.

14 In terms of characteristics, the -- defendants indicate
15 gender issues, 23 percent male, 77 percent female. There's no
16 response from plaintiffs.

17 **MS. HAZAM:** There is no gender data to date, Your
18 Honor. So the short-form complaints do not ask for gender.
19 They have names. We don't know how defendants have derived
20 this information, if they are making assumptions based on
21 names, if they are looking at their own account data in some
22 manner.

23 **THE COURT:** All right.

24 **MS. HAZAM:** This is one of the reasons we do not
25 think it's appropriate to be in any way incorporated.

1 **THE COURT:** Ms. Pierson?

2 **MS. PIERSON:** We would note, of course, that
3 plaintiffs' counsel speaks directly to their clients.

4 **THE COURT:** Ms. Pierson, where's your data from?

5 **MS. PIERSON:** Sure. Our data comes from analysis,
6 both of names and -- and investigation of the plaintiffs
7 themselves, not from their -- their account data, but through
8 other means.

9 And -- and, of course, plaintiffs' counsel speaks directly
10 to their clients, so if there were some contrary data on
11 gender, I -- I would expect them to share that with us.

12 **THE COURT:** In terms of the issue of -- of -- that
13 the -- again, defendants have raised this -- adult at the time
14 of filing. And you have -- and plaintiffs talk about age at
15 the time of first use.

16 Okay. So with respect to defendants' articulation, they
17 have 46 percent -- 46 percent of the plaintiffs were 18 at --
18 or older at the time of filing.

19 I have no response from plaintiff.

20 **MS. HAZAM:** Correct, Your Honor. We have not even
21 attempted to compile our own statistics on that because we do
22 not believe it has any import to the issues in this case,
23 tells you nothing about liability, causation, or damages. And
24 it says nothing about what is important that is age related in
25 this case, which is age of first use -- that obviously goes

1 directly to plaintiffs' age verification claim as well as
2 other claims.

3 We did --

4 **THE COURT:** All right.

5 **MS. HAZAM:** -- compile some data on that which is
6 reflected in the statement.

7 **THE COURT:** All right. What is the point of being an
8 adult -- why is that data relevant?

9 **MS. PIERSON:** There are a few reasons, Your Honor. I
10 mean, we have been told throughout the course of this MDL that
11 this MDL is -- is about children and that the MDL is made up
12 of children. But the reality is, as we noted in our papers,
13 46 percent of the plaintiffs were over 18 at the time of
14 filing. And, in fact, 52 percent of plaintiffs are over 18
15 today.

16 That's an important demographic that's very different than
17 what plaintiffs' counsel suggest this MDL is comprised of.
18 But in addition to that, there's some practical reasons that a
19 significant portion of the bellwether pool's selection should
20 be adults.

21 We know that adult plaintiffs are more likely to have
22 broad experience with the platforms. We know that they're
23 able to sit for fulsome depositions. And we know that they
24 are best able to articulate and describe the injuries, which
25 will be squarely at issue on the question of causation.

1 Those are the reasons why, Your Honor, we ask that the
2 court require the parties to consider in their bellwether
3 selections a proportional share of adult plaintiffs and also
4 of male plaintiffs.

5 **MS. HAZAM:** If I may respond.

6 **THE COURT:** Why don't I have data from you, then,
7 about first use?

8 **MS. PIERSON:** We won't know that until we get the
9 plaintiff fact sheets, Your Honor. The -- the short-form --

10 **THE COURT:** Do you think that it's not relevant,
11 first use?

12 What's your perspective on the characteristic?

13 **MS. PIERSON:** On the characteristic of first use?

14 **THE COURT:** Yeah.

15 **MS. PIERSON:** I think --

16 **THE COURT:** I mean, they have here that over
17 50 percent of the plaintiffs were under the age of 10 at first
18 use and over 75 percent were under the age of 12. So even if
19 you are right, that the 52 percent were over 18, chances are a
20 huge portion of those started using at 12.

21 **MS. PIERSON:** And --

22 **THE COURT:** And so part of this is -- yes, they may
23 be adults now, but they were children when it started.

24 **MS. PIERSON:** And we will hear testimony about that
25 from adult plaintiffs, Your Honor. That's part of the reason

1 that we suggest that we should be considering adult
2 plaintiffs, not because they started using the platforms as
3 adults but, rather, because they'll have broad experience and
4 can speak to that.

5 Until we receive plaintiffs' experts report, we really
6 won't know what the pivotal point in time is, Your Honor.
7 We've heard them suggest that sometimes it's age at first use.
8 Sometimes they've told us it's age at peak use. At other
9 sometimes, they've told us that the question is duration of
10 use. So until we get to the disclosure of expert --

11 **THE COURT:** But wouldn't it be more important for
12 us -- I mean, and -- look, none of this is going to be looked
13 at in a vacuum.

14 The notion that I would choose someone for a bellwether
15 trial who's been using it from the age of 17 to 18 is probably
16 low, 'cause that's not apparently representative, right, of
17 all of these plaintiffs.

18 If I have 75 percent who started using them under the age
19 of 12, you can -- I can reasonably say that some of those
20 bellwethers are going to include plaintiffs who were under the
21 age of 12 when they started using.

22 So just talking about the filing age isn't -- you know,
23 isn't dispositive in any way. It is one of many
24 considerations.

25 I will also say that it is highly unlikely that I would

1 put in a bellwether situation a child of 10 or 12 on the
2 stand.

3 I had to testify as a ten-year old, and I am very
4 sensitive to putting children up there for no reason.
5 Sometimes we have to do it. Sometimes judges have to do it.
6 More in the state court than in the federal court. But you
7 have not found a judge who would do that easily.

8 **MS. PIERSON:** Fortunately, I don't think you'll be
9 faced with that situation, Your Honor. There are only 20
10 plaintiffs who are under the age of 13 in this MDL.

11 **THE COURT:** I thought you said you didn't know.

12 **MS. PIERSON:** No. I -- I don't have data on first
13 use, age at first use.

14 What I know is the data of the age of the plaintiffs today
15 because we have their date of birth.

16 **THE COURT:** Yeah.

17 **MS. PIERSON:** So --

18 **MS. HAZAM:** Your Honor, if I could --

19 **THE COURT:** You could also have -- I know 14- and
20 15-year-olds who are probably more articulate and self aware
21 than 18-year-olds.

22 It is not dispositive. It is and should be a
23 consideration on both sides.

24 And -- and let me say this, too. I would suggest to you
25 that you don't want to waste your choices on picking people

1 who aren't going to give us data because I won't choose them.
2 So you do so at your own peril. It may be appropriate to have
3 one suicide, just so we know what the tail is on something
4 like that.

5 And it may be appropriate to have one who alleges no
6 addiction or compulsive use so that we know what those outside
7 barriers are with the balance in the middle.

8 I understand that Judge Kuhl and I have very different
9 views about picking bellwethers.

10 But I don't think -- I don't think it's a perfect science.
11 And my goal is to have datapoints that give you information.
12 That's my goal.

13 So what do you want me to do with this?

14 **MS. HAZAM:** Your Honor, plaintiffs are not suggesting
15 that age become a criteria for the bellwether pool or that the
16 bellwether pool be selected with any breakdown based on age.
17 That was, of course, defendants' suggestion.

18 The statistics that we derived were derived from the same
19 sources defendants have access to, not our unique access to
20 the plaintiffs. They were derived from the short-form
21 complaints which indicate a birth date and the date when a
22 certain plaintiff started using a platform. The plaintiff
23 preservation forms also include date of birth.

24 So we were using those same sources, but it is not our
25 suggestion that age become a part of the criteria. It is

1 however our strong position that age at time of filing has no
2 relevance whatsoever.

3 It is not at all surprising that plaintiffs who experience
4 these harms as children may not file until they reach the age
5 of majority. But it doesn't tell us anything important about
6 how age plays into these claims, so our position --

7 **THE COURT:** From what I --

8 **MS. HAZAM:** -- is that age should not be used as a
9 criterion but can be taken into account, of course, by the
10 parties and the court in making selections.

11 **THE COURT:** So what do you want me to do? I'm mean,
12 I'm not saying that you can't think about it. I'm not saying
13 that you can't argue it.

14 **MS. HAZAM:** Right.

15 **MS. PIERSON:** Your Honor --

16 **THE COURT:** I'm not talking to you.

17 Ms. Pierson?

18 **MS. PIERSON:** Thank you, Your Honor.

19 I think defendants' only request as it relates to age and
20 gender, and -- and your comments this morning are helpful. We
21 think these are important factors that help to define a
22 representative pool.

23 **THE COURT:** I don't --

24 (Simultaneous colloquy.)

25 **THE COURT:** I don't disagree with you, but, you know,

1 do I -- you're going to make your arguments. You're going to
2 give me data from these individuals, and we're going to select
3 some folks. I think it's -- I think -- age is merely, as I
4 think about it, only a -- a way of trying to identify whether
5 someone is mature enough to go through this process, which
6 will not be insignificant.

7 And that's why I'll tell you right now, don't bring me any
8 10-year-olds or 12-year-olds because I'm going to reject them.

9 **MS. HAZAM:** Understood.

10 **MS. PIERSON:** We certainly -- certainly won't, Your
11 Honor. And -- and I appreciate your comments this morning on
12 the things that you'll be looking for as you're choosing
13 the -- the bellwether cases.

14 You asked the question of, you know, what do we want you
15 to do, and -- and I think, you know, to prioritize our asks in
16 the CMC statement, I would say our first priority is to ask
17 the Court to be consistent in how you handle the outliers.
18 And we believe both suicide and non-addiction cases to be
19 outliers.

20 Plaintiffs' omission of non-addiction cases and other
21 cases and claims -- like, there are 11 cases that allege ADHD
22 caused by the platforms. There are other cases of small
23 number that they have excluded, yet somehow they believe that
24 suicide cases should be included at this juncture.

25 Our belief that is that they should -- the Court should

1 consistently exclude those as outliers now for a couple of
2 reasons. One reason, Your Honor, is that with just six
3 bellwether picks, if the pool is narrowed now to exclude
4 outlier cases, it allows the parties or really forces the
5 parties to look more to the middle and representativeness from
6 the get-go.

7 We know that plaintiff fact sheets will be served in the
8 personal injury cases on April the 1st and that by April the
9 15th, we need to provide you with our selections and briefing
10 on the selections.

11 So there's a very short window of time for us to analyze
12 the data and determine what is truly representative when we
13 have answers from the plaintiffs themselves to [sic] the form
14 of plaintiff fact sheets.

15 So narrowing the pool now to exclude outliers has a
16 significant benefit to the Court later so that you're not
17 hearing argument about -- about those things at a later --
18 later date. I'd say our second priority, Your Honor, is that
19 you include the body dysmorphia and sleep disorder cases.
20 There's really no reason to exclude them.

21 We know that more than 50 plaintiffs claim those injuries,
22 50 each for both body dysmorphia and sleeping disorders. We
23 know that the master complaint itself includes allegations
24 that make clear that plaintiffs believe that sleeping
25 disorders are the gateway to a number of other injuries.

1 And there are three separate allegations in the master
2 complaint that treat eating disorders and body dysmorphia as
3 one, making the allegation that filters lead to self-image
4 problems --

5 (Simultaneous colloquy.)

6 **MS. PIERSON:** -- lead to body dysmorphia --

7 **THE COURT:** I'm not deciding today, so previewing the
8 argument for two months from now, I'm not sure does you any
9 good.

10 **MS. PIERSON:** Understood.

11 Our only request is that those things be added to the
12 criteria for bellwether pool selection, that those plaintiffs
13 be eligible to be selected.

14 **THE COURT:** Response.

15 **MS. HAZAM:** Yes, Your Honor.

16 Those two injuries that Counsel just referred to, body
17 dysmorphia and sleep disorder occur almost universally
18 together with other qualifying injuries so the parties have
19 agreed already that eating disorders --

20 **THE COURT:** So why do you disagree vehemently with
21 their approach? So what?

22 **MS. HAZAM:** I -- I simply believe it will be a tiny
23 number of plaintiffs who would be eligible by virtue of having
24 only those injuries and not the others.

25 **THE COURT:** Then why are we fighting about it? Then

1 let them have what they want, and you present their best case,
2 they're going to present their best case, and I'm going to
3 decide.

4 Why should we fight about this?

5 **MS. HAZAM:** Fine with that, Your Honor. We can argue
6 about representativeness at the time of selection. That would
7 be our argument, that these are a tiny number of plaintiffs.

8 **THE COURT:** Okay. So --

9 **MS. HAZAM:** That's fine.

10 **THE COURT:** -- I don't understand why we're arguing
11 about it.

12 **MS. HAZAM:** Can I speak to the suicide cases, if Your
13 Honor will permit?

14 **THE COURT:** Okay.

15 **MS. HAZAM:** On the suicide cases, Counsel compared
16 them to the cases that don't allege addiction. I don't
17 believe that is an apples-to-apples comparison.

18 We now know that there may be 3 to 4 plaintiffs who don't
19 allege addiction. There are 29 or 30, depending on who has
20 the correct statistics, who allege suicide. It is a type of
21 self-harm. To include self-harm including suicide attempts as
22 the parties have already agreed but exclude its most severe
23 form does not make sense to plaintiffs.

24 It's a not insignificant number at about 14 percent of the
25 plaintiff population. But it will be considerably larger in

1 terms of value so it may inform settlement.

2 We believe that it makes sense to have some of most severe
3 cases in the mix being worked up for possible early trials.

4 The parties don't have to select these cases, nor does the
5 Court. Nor does the Court have to put any such case first
6 before others. But having them worked up, we believe, is
7 important for understanding overall value and informing
8 resolution.

9 **MS. PIERSON:** Your Honor, if I may respond briefly.

10 It -- it is difficult when we've been discussing this
11 issue, we've briefed this issue, and suddenly today the
12 information that Counsel presents is different than the
13 short-form complaints. And, in fact, they haven't been
14 amended yet.

15 So I -- I would just say the record before the Court comes
16 from short-form complaint data that was completed by these
17 lawyers, and that data suggests that there are 28 cases of
18 non-addiction.

19 We will, of course, know the answer to this precisely when
20 we get PFS data because the plaintiffs themselves complete
21 that, and there is a specific blank for -- for addiction,
22 so --

23 **THE COURT:** I think there's another reason to include
24 the suicide cases, and that is because of all the cases, I
25 struggle understanding how the suicide cases are going to be

1 able to -- to present a case on causation that is not content
2 driven.

3 And it's only -- and -- you know, it is this set of cases
4 that are -- that are going to be briefed and -- and worked up
5 that are going to go through summary judgment. And -- so I
6 think it needs to be worked up.

7 **MS. PIERSON:** There are unique legal questions, Your
8 Honor, and -- and unique cause questions, too.

9 Defendants' position is that those questions can be
10 addressed within the context of the 55 suicide attempt cases.
11 Without the -- the distracting or barbell factor that comes
12 with a completed suicide.

13 There are no unique questions of cause that are presented
14 with suicide that we can't address squarely within the suicide
15 attempt cases.

16 **THE COURT:** And you could be right, so you're going
17 to give me attempted, they're going to give me completed.

18 And then -- I'm not going to decide this in a vacuum, and
19 right now, that's what you're asking me to do. I've seen none
20 of these individual fact sheets. All I have is the master
21 complaints. So that's where I am.

22 **MS. PIERSON:** If that's your decision, Your Honor,
23 the criteria that are articulated on page 8 of the CMC as the
24 agreed-upon criteria -- I think the only change you would need
25 to make to that would be to add body dysmorphia and sleeping

1 disorders. That should resolve -- resolve the issue.

2 Our -- our request for consistency and treatment of the
3 outliers was that if Your Honor chose to include the suicide
4 cases, that the non-addiction cases also be included. But the
5 Court need not make any changes to the criteria stated in the
6 CMC in order for those cases to be included.

7 **MS. HAZAM:** And, Your Honor, while we maintain our
8 position with regards to non-addiction cases, I've already
9 indicated that we accept Your Honor's guidance with regards to
10 body dysmorphia and -- and sleep disorder such that the
11 parties will make their arguments regarding how representative
12 cases that only allege that and not the other injuries are.

13 **THE COURT:** All right.

14 I'll put it in the order that comes out after today.

15 **MS. PIERSON:** Thank you, Your Honor.

16 **MS. HAZAM:** Thank you, Your Honor.

17 **THE COURT:** Okay. Let's move then --

18 Well, did you want to talk today about the timing issues
19 with respect to the plaintiff fact sheets?

20 **MR. WEINKOWITZ:** Good morning, Your Honor.

21 **THE COURT:** At the microphones, Mr. Weinkowitz?

22 **MR. WEINKOWITZ:** Weinkowitz, yes, Your Honor.

23 **THE COURT:** And --

24 **MR. DRAKE:** Geoffrey Drake, King & Spalding, for the
25 TikTok defendants, Your Honor. Good morning.

1 **THE COURT:** Good morning.

2 **MR. WEINKOWITZ:** We have good news for you, Your
3 Honor.

4 **THE COURT:** Great.

5 **MR. WEINKOWITZ:** We resolved our issues yesterday.

6 **THE COURT:** Perfect.

7 **MR. WEINKOWITZ:** So we'll be submitting an
8 implementation order. I'll get that over to the defendants
9 after this status conference, and we'll get it in to you
10 shortly.

11 **THE COURT:** Excellent. Glad I have you on board
12 Weinkowitz. It's a good decision.

13 **MR. WEINKOWITZ:** Thank you.

14 **THE COURT:** Okay. Thank you.

15 **MR. DRAKE:** Thank you, Your Honor.

16 **THE COURT:** I want to talk about the State AG claims
17 next.

18 Who's going to -- okay. So I have Miyata? Ms. Miyata?

19 **MS. MIYATA:** Yes. Bianca Miyata for the State AG's.

20 **THE COURT:** Okay. And, Mr. Hester, they're sending
21 you back?

22 **MR. HESTER:** Yes. Back for a second round, Your
23 Honor.

24 **THE COURT:** Okay.

25 So a couple of things. First, I want to talk about jury

1 versus noninjury claims. And then I want to take a look at
2 the current briefing and the responses to that and whether we
3 can -- whether we need to get ahead of the game on some --
4 making sure that there is accurate articulations of the
5 various states -- kind of back to where -- I kind of alluded
6 to this earlier, Mr. Hester.

7 I see that the State AGs have indicated that they are
8 willing to waive juries.

9 **MS. MIYATA:** That's correct.

10 **THE COURT:** And Meta has -- is not there. But what I
11 don't know and what I would like to know is whether there's an
12 entitlement to it in the first instance. So you can't demand
13 it if you're not entitled to it.

14 **MR. HESTER:** Yes, Your Honor.

15 **THE COURT:** And so have you all done a survey of the
16 various claims that are at issue and whether or not there's an
17 entitlement to a jury trial in the first instance?

18 **MR. HESTER:** We -- we've looked at that, Your Honor.
19 We believe that we do have an entitlement to a jury trial as a
20 matter of right under the Seventh Amendment based on the *Tull*
21 *vs. United States* decision.

22 **THE COURT:** All right. I'm talking about the state
23 laws' version -- so for instance, if -- if all I was dealing
24 with was a UCL claim under California law, you're not entitled
25 to it. I don't care what the Seventh Amendment is. The state

1 of California -- the Supreme Court of California says for our
2 claim, you're not entitled to it.

3 **MR. HESTER:** I think it's a federal question, Your
4 Honor. It's a federal question in federal court on -- as to
5 whether we're entitled to a jury trial right. There's
6 different standards in state court. But in federal court,
7 there's a jury trial right that attaches under the Seventh
8 Amendment. The Seventh Amendment doesn't apply to trials in
9 state court.

10 **THE COURT:** A response?

11 **MS. MIYATA:** Your Honor, to the extent that Meta may
12 be requesting a jury trial on all claims, I guess is what I'm
13 hearing, I'd -- I'd like to understand which claims those are.

14 It's the states' position that this action is equitable
15 and that our request for relief is equitable. And as such,
16 the right for a jury trial -- you know, the states have agreed
17 to waive any right under state law which may attach.

18 And I think we'd like to better understand which claims
19 Meta -- Meta seeks to -- Meta believes they may have this
20 entitlement for --

21 **THE COURT:** Yeah, I mean --

22 **MS. MIYATA:** -- before we can respond.

23 **THE COURT:** -- it would be important because even
24 when you have a jury trial -- frequently, there are -- in all
25 sorts of context, patent context, antitrust context, all sorts

1 of context.

2 You're not always -- a jury certain doesn't give equitable
3 relief, does not give injunctive relief, so you're not
4 entitled to it.

5 **MR. HESTER:** As to relief, Your Honor, but as -- that
6 may be true. And the *Tull* case, for instance, draws that
7 distinction between an entitlement to a jury trial on the
8 remedy under civil penalties versus liability.

9 But as to the -- as to the liability phase, we're entitled
10 to a jury trial. At this point, we're not -- we're simply
11 being clear, we're not waiving our right to a jury trial. And
12 we believe we have one as a matter of Seventh Amendment right
13 because the *Tull* case and others reflect that in federal
14 court, there's a Seventh Amendment right to a jury trial
15 where, as here, the AGs are seeking civil penalties.

16 All of their -- all of their claims ultimately reduce to a
17 claim for civil penalties. And the *Tull* case addressed that
18 very scenario, so we think that --

19 **THE COURT:** I don't think you cited that case in the
20 statement, did you?

21 **MR. HESTER:** Yes, we did, Your Honor.

22 **THE COURT:** Okay.

23 **MR. HESTER:** It's -- it's *Tull v. United States*, 481
24 U.S. 412. And it's -- its in our statement of position.

25 **THE COURT:** I see it.

1 **MR. HESTER:** But --

2 **THE COURT:** All right. Do you have any response to
3 that case?

4 **MS. MIYATA:** I do, Your Honor.

5 I do not believe that our case boils down merely to civil
6 penalties. Instead, the states seek significant injunctive
7 relief. The states seek disgorgement. And, again, those are
8 remedies that are clearly equitable in nature, not legal.

9 I believe that perhaps my friend on the other side paints
10 with a too broad a brush when saying that our case merely
11 boils down to civil penalties.

12 **THE COURT:** Well, you put in here that you seek
13 statutory civil penalties.

14 **MS. MIYATA:** That's correct.

15 **THE COURT:** And so --

16 **MS. MIYATA:** But not solely statutory civil
17 penalties.

18 **THE COURT:** Correct. But -- but we also frequently
19 bifurcate.

20 **MS. MIYATA:** Correct.

21 **THE COURT:** So do you agree that under this case,
22 they have a jury trial right on claims in -- where civil
23 penalties are asserted?

24 **MS. MIYATA:** Your Honor, I think we would have to
25 brief that question further, but as I stand here today, I

1 would say that the civil penalties that flow from consumer
2 protection cases and flow from our UDAP laws, again, are
3 equitable in nature. Those are not the types of penalties
4 that are determined, like damages, as a legal -- as a form of
5 legal relief.

6 **THE COURT:** Well, I -- I think I -- I would like to
7 understand the landscape. And so I want you to work on a
8 joint submission and -- I don't need it tomorrow. I don't
9 need it in a week, but I do want to have it.

10 So for each state, an identification of what remedies
11 you're seeking, injunctive, statutory damages, restitution,
12 disgorgement, whatever it is. It can be in a chart. I like
13 charts. They don't have a lot of adverbs.

14 So I envision, you know -- each state can do their own
15 chart, with a -- you know, with each of the remedies, and then
16 just say -- you know, have a box, jury or not jury, and let me
17 know.

18 Then you can send that to the defendants. If you disagree
19 with their articulation of whether or not a jury is entitled,
20 then you let me know.

21 And then I can -- you know, and then we can move from
22 there. Under all cases, if they're seeking -- and I think
23 that they are -- I think it's pretty clear that injunctive
24 relief is not afforded by a jury -- so in whatever case, it
25 would have to have both a -- you know, it would have to have a

1 court component to it in terms of injunctive relief.

2 MS. MIYATA: And, Your Honor, just to clarify, in the
3 chart we are to inform Your Honor about our position about
4 whether a jury trial would be afforded under state law; is
5 that correct?

6 THE COURT: Correct.

7 MS. MIYATA: Okay.

8 THE COURT: Under state law.

9 MS. MIYATA: Thank you.

10 MR. HESTER: And, your Honor --

11 THE COURT: I understand that you've got your other
12 arguments.

13 MR. HESTER: Right.

14 THE COURT: But I want to make sure that we all agree
15 in the first instance as to what the states themselves are
16 affording. Because, you know -- yeah.

17 MR. HESTER: The -- understood, Your Honor.

18 I just want to make clear so that we're communicating
19 well. We're distinguishing between the question of jury trial
20 on liability and the question of jury trial on remedies. And
21 we understand the issue is different and -- and potentially
22 may be meaningfully different on this question of a Seventh
23 Amendment right.

24 The *Tull* case itself recognizes the difference, finds a
25 jury trial right under the Seventh Amendment to liability on a

1 civil penalties claim but did not find a jury trial right on
2 the remedy.

3 So I think it's also going to be important in this chart
4 that there be a distinction drawn in what the AGs provide us
5 between the liability question and the remedy question.
6 They're different.

7 **THE COURT:** So just -- we'd add a column on
8 liability.

9 **MS. MIYATA:** Happy to do that, Your Honor.

10 **THE COURT:** And then if you -- I would ask that you
11 meet and confer about the meaning of *Tull*. And if you
12 disagree, then I can get some short briefs on the meaning of
13 *Tull*. But I think we can parallel process that. It's really
14 something that I need to get my arms around in terms of trial.
15 That's all.

16 **MR. HESTER:** So, Your Honor, we should hold off on
17 this Seventh Amendment question for now and simply focus on
18 the state law issue?

19 **THE COURT:** I would. And I'd ask that you meet and
20 confer on the Seventh Amendment issue because you may
21 ultimately agree.

22 **MR. HESTER:** Right.

23 **THE COURT:** In which case, then what I would want is
24 a joint statement of what your agreement is. I like it in
25 writing so that you can't take it back later, so --

1 Okay?

2 So maybe if you could get that to me a week before our
3 next conference so that we could just have maybe a short
4 discussion about it and then see where we go from there.

5 **MR. HESTER:** Will do, Your Honor.

6 **MS. MIYATA:** Thank you, Your Honor.

7 **MR. HESTER:** Thank you.

8 **THE COURT:** Thank you.

9 Don't leave yet.

10 Unless someone else -- I mean, unless -- yeah.

11 You can bring someone else if you need a life line,
12 Mr. Hester.

13 **THE COURT:** Okay.

14 I have not read and it's not fully briefed Meta's motion
15 to dismiss the AG's complaint, the Florida AG complaint, and
16 then the personal injury claims for consumer protection and
17 misrepresentation. Docket 517.

18 And I do have an opposition, but the reply is not yet due.
19 Or oppositions.

20 I do try to do my job in terms of understanding what the
21 various states laws require. And in my view, I don't always
22 get that from the parties.

23 So I will ask on the front end, understanding I didn't
24 read this -- I see some bold language -- some bolded states in
25 the motion.

1 Have you -- you know, have you teased those issues out by
2 states?

3 I see that there are some appendices on the oppositions
4 which, you know, do try to tease out the -- the state law
5 issues with respect to these topics.

6 One of the things -- and I'm looking at, you know, some of
7 the tables at Docket 600, and there's an appendix at 599 that,
8 you know, seem to try to do some of this.

9 For me, it would be me efficient if the defendants in your
10 reply kind of appended the tables, right, with your
11 perspective so that we don't have to cut and paste or try to
12 do that kind of combination ourselves.

13 So any reactions to that issue or, you know, whether --
14 I -- because I haven't read it, I'm not -- I don't have a lot
15 of clarity in what -- in my guidance.

16 What I'm looking for is to make sure I have what I need so
17 that we can move forward without having to do some
18 supplemental order again and say, could you please do X, Y and
19 Z on a state-wide basis because you haven't done it.

20 **MR. HESTER:** I know we're in the midst of the
21 briefing, and, Your Honor, we are undertaking to go state by
22 state. In some respects, we sometimes clump states together
23 because we think they raise a common issue.

24 We can certainly also take on board the point about an
25 appendix that would help the Court and be more sort of linear

1 in a sense, not purely argumentative but would just have the
2 key points. And so yes, we can do that, and that's certainly
3 what we're undertaking to do, is to provide an answer on the
4 state law of each state at issue.

5 We don't always address every element. We address the
6 elements that we think are dispositive on the point. But
7 that's what we've undertaken to do.

8 And we can certainly -- and I think my -- the earlier
9 discussion with the Court illuminates the importance of
10 providing the Court with this. So we -- we will certainly
11 keep that in mind and work on it as we're finalizing this
12 reply.

13 **THE COURT:** Well, it would -- you know, I would
14 appreciate it if the plaintiffs would give editable versions
15 of their appendices to the defendants, because -- and some of
16 this -- like, I'm looking at some of these. It doesn't --
17 like, Appendix 1 at page 32 of 51, all this looks like is a
18 statement of what the law is and what the definition of
19 certain things are.

20 It would be helpful for me to have on here from the
21 defense "agreed." Right?

22 **MR. HESTER:** Right.

23 **THE COURT:** So that we don't have to go and
24 double-check. And if you don't agree, you know, we don't
25 agree that's the definition of "consumer." See a case that

1 might have explained it differently.

2 This is something that I do routinely for summary
3 judgments. You know, I started off as a state court judge
4 here, and we have separate statements of facts where you have
5 to exchange these things, and we -- we have one document that
6 does it.

7 I frequently do it in patent cases where I ask them to
8 combine their -- you know, they have to combine some of their
9 disclosures to help us out.

10 So if the appendices could be shared so that they could be
11 annotated by the defense and, you know -- and if for some
12 reason, we need to give you an opportunity to respond, we'll
13 give you an opportunity to respond.

14 But what I'm trying to do is have it all in one place as
15 opposed to us trying to pull it together, which just takes
16 extra time.

17 **MR. HESTER:** I --

18 **MS. MIYATA:** We're happy --

19 **MR. HESTER:** I understand. Thank you.

20 Go ahead.

21 **MS. MIYATA:** We're happy to provide those editable --
22 our editable appendix to defendants. I would note that in the
23 motion to dismiss, defendant has addressed numerous state laws
24 in different ways, and many of these are addressed in string
25 cites or in mentions, and we've done our best in our response

1 in our opposition, I think, to respond to those in a thorough
2 and systematic way, I think, to make sure that we're touching
3 on each state's law.

4 But to the extent that the Court would like to have a more
5 thorough explanation or a more -- you know, a more a fulsome
6 discussion, I think, of the state-by-state laws, we would
7 request supplemental briefing.

8 **THE COURT:** Yeah, and --

9 **MS. MIYATA:** Within the confines of the page limits,
10 I think there was only so much all the parties could do.

11 **THE COURT:** I agree. And I understand there are
12 limits. As I said to my law clerk, though, I am reluctant to
13 give you more pages because I'm still not getting what I want,
14 so having more pages of what I don't want doesn't help me.

15 What I'm looking for are ways to efficiently digest this
16 information.

17 **MS. MIYATA:** Yeah.

18 **THE COURT:** And having it compiled together sometimes
19 makes it more efficient for us. So --

20 **MR. HESTER:** Your Honor, we're listening to the
21 Court. And I think we understand that -- what the Court is
22 asking us to do.

23 The page limits do sometimes constrain us, but I also
24 understand the point about making sure we're giving the Court
25 what you need.

1 Our reply brief, I believe, is due Monday. It would be
2 hard for us to shift course a little bit on some of this by
3 Monday, Your Honor, I -- not that we -- we been trying to do
4 this, but I'm not sure it will be as systematic as the Court
5 would like.

6 If we could have another week, I think we could do better.

7 **THE COURT:** I think that's fine. You could have
8 another week.

9 **MS. MIYATA:** Okay.

10 And to be clear, the appendix that we are to work on
11 together to provide to defendants is the appendix that we have
12 provided merely on state law. I believe that defendants also
13 filed an appendix with regard to misrepresentations where they
14 stated some positions about what may have or may not have met
15 requirements.

16 Is that appendix also one that we should be looking at to
17 compile and put together?

18 **THE COURT:** I -- I don't know where that is.

19 **MS. MIYATA:** Think that's attached to -- I believe
20 that's attached to Meta's motion to dismiss --

21 **THE COURT:** Okay.

22 **MS. MIYATA:** -- the State AGs' claims.

23 **THE COURT:** I don't have that one, but, again, if you
24 could give it to them and if you could, you know, also file --
25 I'm not looking at it, so I don't know what it is.

1 **MR. HESTER:** It was -- it was a listing of all of the
2 alleged misrepresentations in the complaint. And it was a
3 listing of our position as to why they were not actionable for
4 various reasons.

5 So it was -- it was really Meta's reference tool for the
6 Court. I think it may be different from what the Court is now
7 asking us for, which is something really focused on the -- on
8 the elements of state law.

9 **THE COURT:** So if -- I don't know that I'm going to
10 need a -- you know, statement-by-statement issue with respect
11 to the statements. If I need it, then I'll ask for it.

12 **MS. MIYATA:** Understood.

13 **THE COURT:** Again, I do it in security cases. I
14 require them to identify, and then -- and then I get the
15 response. But security cases are different, so --

16 **MS. MIYATA:** And to be clear --

17 **THE COURT:** Let me take a look at it and, you know,
18 we'll give you enough time. But I don't know that I need
19 that.

20 **MS. MIYATA:** Thank you.

21 And to be clear, in the plaintiffs' -- I believe in the
22 plaintiffs' collective responses and oppositions, we only
23 responded regarding the states that Meta targeted in their
24 motion to dismiss and regarding those states' laws.

25 To the extent that -- that Meta or defendants intend to

1 address additional states' laws in their reply, we would ask
2 for the opportunity to respond to that additional new
3 argument.

4 **THE COURT:** Okay. Well, when you get the reply, if
5 you -- if you think that you -- that it would be appropriate,
6 then file a request and tell me what you're thinking about
7 specifically and what you think you need.

8 **MS. MIYATA:** Understood. Thank you, Your Honor.

9 **THE COURT:** Okay? All right. Great.

10 **MR. HESTER:** Thank you, Your Honor.

11 **MS. MIYATA:** And may I -- while we're on this same
12 topic about motion to dismiss and the states' claims, we were
13 hopeful that we could request that Your Honor set this for
14 hearing just for planning purposes.

15 **THE COURT:** So it -- yeah, we're -- my plan is to --
16 to have a -- the argument happen at least in the first
17 instance at the next hearing in April.

18 **MS. MIYATA:** In April. Okay.

19 **THE COURT:** In April.

20 And I may need two rounds of -- you know, depending on how
21 much is coming in, et cetera, I may need two rounds. But I
22 think in the first instance, you should be prepared to argue
23 it in April.

24 **MS. MIYATA:** All right. Thank you.

25 **THE COURT:** The other one that we will try to get to

1 in April is the remand motion. That was noticed for the wrong
2 day. It should have been noticed for the same day as the
3 conference, so we'll just issue a clerk's notice to deal with
4 that. Okay?

5 Okay. I think that's all I had on my list. I'll open it
6 up in case anybody else has other things they want to talk
7 about.

8 **MS. HAZAM:** Your Honor, Lexie Hazam for plaintiffs.

9 I wanted to clarify one thing with regards to Your Honor's
10 scheduling order, which is CMO10, if I may?

11 **THE COURT:** Yeah.

12 **MS. HAZAM:** Page 2 of CMO10 lists dates for case
13 specific experts, plaintiffs' opening briefs, defendants'
14 responsive briefs, et cetera. And it has the Court's
15 identification of the bellwether trial pools happening in
16 between those two dates.

17 **THE COURT:** I do. And here's why.

18 **MS. HAZAM:** Okay.

19 **THE COURT:** Not all of the cases that have been
20 identified are going to go to trial, so what I'm trying to do
21 is narrow the amount of work that you have to do to get ready
22 for trial.

23 It appeared to me that we needed to have plaintiffs'
24 opening reports as additional information to decide which
25 cases go to trial. I don't need defendants' reports for that

1 purpose.

2 So once we get that -- and I don't think defendants need
3 defendants' report and I don't think you need defendants'
4 reports to identify which are going to go to trial.

5 But -- so once the plaintiffs opening reports come out, it
6 seems to me that's the additional information that's needed to
7 make, then, the final selection, and then that's what gets
8 focused on. And those are the other reports that should get
9 issued.

10 Again, the point is to narrow the expense and the amount
11 that you have to do. And, obviously, you know, if other cases
12 are going to go, they're going to go and you can do it later.
13 But I don't think that we need everybody's all expert
14 discovery done on cases that aren't going to trial at -- at
15 that time. That was my rationale.

16 **MS. HAZAM:** Understood, Your Honor. That answers my
17 question.

18 **THE COURT:** Okay. Any -- any other questions?

19 **MS. SIMONSEN:** No other questions. Thank you, Your
20 Honor.

21 **THE COURT:** Okay.

22 **MS. HAZAM:** Thank you.

23 **THE COURT:** Okay. Anything else that you all want to
24 talk about today?

25 **MS. HAZAM:** Nothing for plaintiffs, Your Honor.

1 **MS. PIERSON:** Nothing for defendants, Your Honor.

2 **THE COURT:** Terrific. Then you can have lunch before
3 you get to your airplanes.

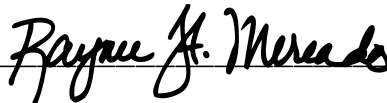
4 All right. We're adjourned. Thank you.

5 (Proceedings were concluded at 11:34 A.M.)

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11 **CERTIFICATE OF REPORTER**

12
13 I certify that the foregoing is a correct transcript
14 from the record of proceedings in the above-entitled matter.
15 I further certify that I am neither counsel for, related to,
16 nor employed by any of the parties to the action in which this
17 hearing was taken, and further that I am not financially nor
18 otherwise interested in the outcome of the action.

19
20 

21 Raynee H. Mercado, CSR, RMR, CRR, FCRR, CCRR

22 Thursday, February 29, 2024